Justice of the Peace
and
LOCAL
GOVERNMENT REVIEW
ESTABLISHED 1837
[Registered at the General Post Office as a Newspaper]
LONDON:
SATURDAY, JANUARY 14, 1956
Vol. CXX. No. 2. Pages 17–34
Offices: LITTLE LONDON, CHICHESTER, SUSSEX
Chichester 3637 (Private Branch Exchange).
Showroom and Advertising: 11 & 12 Bell Yard, Temple Bar, W.C.2.
Holborn 6900.
Price 2*s.* 3*d.* (including Reports), 1*s.* 3*d.* (without Reports).

CONTENTS

REPORTS

NOTES OF THE WEEK

The Master of the Rolls

The announcement in the New Year's Honours list that Her Majesty has decided to confer a barony upon Sir Raymond Evershed will be received with pleasure in wider than purely legal circles.

Sir Raymond, who has presided over the Court of Appeal since 1949, has been active in many spheres besides the law.

He was born in 1899 and after Clifton and Balliol College, Oxford, was called to the bar by Lincoln's Inn in 1923. His lordship took silk in 1933, after enjoying an extensive practice in the Chancery Division. Amongst his many employments after becoming a K.C. were chairman of the Central Price Regulation Committee (1939–1942), Regional Controller of the Midlands coal producing region (1942–1944), Judge of the Chancery Division of the High Court (1944–1947), and a Lord Justice of Appeal (1947–1949).

The new peer was also a member of the Ministerial Committee on Compensation and Betterment and of the Industrial and Export Council appointed by the President of the Board of Trade in 1941. He was, further, chairman of committees of inquiry into dock wages and prices and production of textile machinery. Notwithstanding the wide variety and scope of his work, perhaps the best-known of Sir Raymond's activities were in connexion with the Committee on Practice and Procedure in the Supreme Court, of which he was appointed chairman in 1947. The committee was appointed for the purposes of inquiring by what modifications of High Court procedure justice could be expedited and rendered cheaper for the benefit of litigants. The extensive recommendations of this committee are now in the course of being brought into practical force.

Mr. Justice Diplock

Her Majesty the Queen has signified her assent to the appointment of Mr. (William John) Kenneth Diplock, Q.C., as one of her Judges of the High Court (Queen's Bench Division).

The new Judge, who was born in 1907 and educated at Whitgift and University College, Oxford, was called to the bar by the Middle Temple in 1932. He was awarded a certificate of honour at his Final examination, and speedily acquired an extensive practice on the common law side in London.

After service with the R.A.F. between 1941 and 1945, Mr. Justice Diplock resumed his practice at the bar and took silk in 1948. In 1951 he was appointed recorder of Oxford in succession to Mr. John Foster, Q.C., who had received ministerial office as Parliamentary Secretary to the Ministry of Commonwealth Relations. In addition, between 1939 and 1948, he occupied the position of Secretary to the Master of the Rolls. His lordship is not only known to the legal profession as a distinguished common lawyer but also as a frequent participant as a horseman in the Pegasus Club (Bar) point-to-point races.

Deportation

While we in this country are accustomed to welcome men and women who come from other parts of the Commonwealth and Empire as students or workers, there are times when the feeling is expressed that it ought to be possible to get rid of some who prove themselves undesirable. Deportation of those who are able to establish British nationality is, however, impossible.

Whether this is right or wrong, it certainly seems only fair that there should be give and take between different parts of Her Majesty's dominions and colonies, and that the arrangement should not be one-sided. At present a man may be sent back to this country, although the country returning him would not be called upon to receive back a man who had come here from that dominion or colony.

Attention was called to this matter by the Lord Chief Justice in *R.* v. *Middleweek* (*The Times*, December 20) in the Court of Criminal Appeal. The appellant, who had been sentenced to seven years' preventive detention, had a record of convictions, following which he had made a real effort to go straight. He was sent by his employers to Canada and worked there. When applying for Canadian citizenship, he disclosed his criminal record and he was deported to this country. The Lord Chief Justice expressed the opinion that if the appellant had been allowed to remain in Canada he

would probably have been able to make a new life. It was a curious thing, and one which should be mentioned in Parliament, that other countries could deport English criminals back to England, but England could not deport criminals from the dominions and colonies back to their own countries.

The Court reduced the sentence to one of four years' imprisonment, Lord Goddard observing that if the man went to preventive detention, that sink of the criminal classes, there was really no hope for him.

Fitness to Drive

Section 5 (1) of the Road Traffic Act, 1930, requires an applicant for a driving licence to make a declaration in the prescribed form as to whether he is suffering from certain specified diseases or disabilities or from any others which would be likely to cause his driving to be a source of danger to the public. Section 5 (4) gives power to a licensing authority to revoke a licence they have granted if they are satisfied that he is so suffering from any such disease or disability. This is subject to the right of the licensee, in certain cases, to apply to be "tested" and to his right to appeal to a magistrates' court.

That s. 5 is not wholly effective is suggested by the report of a case of a driver convicted of dangerous driving who was said to be aged 70, senile, blind in one eye, with poor vision in the other, to have a serious heart condition and to suffer from high blood pressure. He was fined £30 and was disqualified for 10 years.

With road conditions as they are today it is an appalling thought that anyone with such disabilities should either wish or be allowed to drive a motor vehicle. In this case, having regard to the defendant's age, the 10 year disqualification should ensure that he does not drive again. It would appear likely that should he seek under s. 7 (3) of the 1930 Act to get his disqualification removed he would have to satisfy the court that he was no longer suffering from the disabilities referred to.

We wonder whether courts use sufficiently the power given by s. 6 (3) of the 1934 Act to disqualify a person convicted of an offence under s. 11 or s. 12 of the 1930 Act until he has, since the conviction, passed a test of competence to drive. There are persons who have driven for many years whose alertness and powers of concentration are not what they were. There are others who have not driven for many years but who are entitled to obtain a licence without passing a test because they held a licence before April 1, 1934 (*see* the 1934 Act, s. 6 (1) (*b*)). It is very likely that many such drivers would be unable to pass a driving test, and if any of them is convicted of an offence under s. 11 or s. 12 it seems appropriate that his future driving should be dependent upon his ability to prove that he can still achieve the required standard of competence.

Dangerous Driving

We have seen in a local newspaper a report of a case in which, on a plea of guilty, a defendant was fined £10 and disqualified for six months for dangerous driving.

He was said to have attempted to overtake four cars when another car approached from the other direction. The driver of this approaching car had to pull on to the grass verge as had the driver of one of the cars being overtaken. Thanks to their "avoiding action" there was no accident, and it is reported that the defendant's comment at the time was: "Nobody's been hurt. No damage has been done. This sort of thing happens every day."

The police officer in charge of the case told the court that there had been 1,000 accidents in his division in 1955 and in his opinion it is driving of this kind which causes accidents.

This case seems to us to merit comment because of the attitude of mind which the defendant's comment at the time seems to indicate. A normally good driver may on an isolated occasion take a risk by misjudgment of speed and distances and may thus be guilty of dangerous driving, but we hope that if he does so he regrets it as much as do those whom he inconveniences or endangers. What is to be deprecated is any attempt to justify such conduct as normal and excusable. The defendant's comment at the time, as reported, may give an unduly unfavourable impression of his attitude of mind, but it is to be hoped, if drivers exist who regard driving of the kind described in this case as normal and as a thing which is to be expected and tolerated, that their number is very limited and that courts before whom they appear when their misdeeds lead to their being prosecuted make adequate use of the power to disqualify.

Christmas in Prison

The last place in which most people would choose to spend Christmas is prison, and it is by no means uncommon for an offender, convicted shortly before Christmas, to plead to be spared from imprisonment if only that he may spend the day at home with family and friends.

It was therefore surprising to read of a man asking to be sent to prison for Christmas. He was convicted at Nuneaton of being drunk, and is reported as saying he had been to prison lots of times and been well treated, adding that he wished to see a doctor. It appeared that his list of convictions went back nearly 50 years. When the chairman said the bench were loth to send him to prison and imposed a fine, he said he would take the alternative imprisonment.

This was a homeless man of 73, and it is sad that he felt that prison was the best place for him. There is no need to blame the authorities or the welfare state or anyone else for this condition of affairs. Without doubt this was a case of a man who still believed that prison was to be preferred to anything that would be offered by what he probably called the Poor Law. He may have had bitter memories of long ago when he may have found little comfort in the workhouse, and may still believe that nothing has changed. Even in the old days there were many kindly poor law officials as well as some who were not so kind, and certainly today a great deal is done for old people by both official and voluntary organizations. There is no need now, even if there was in earlier days, to prefer prison to what has replaced the workhouse, but old prejudices die hard.

Witness Summons or *Subpoena*

When an applicant asks a magistrate for a *subpoena*, as often happens, he is not usually referred to the Crown Office but is given a witness summons, which he really wants and which will serve his purpose. The procedure is simple and inexpensive. If a summons is unlikely to be effective, or if it is disregarded, a witness warrant can be issued, though this is rarely necessary once a witness realizes the powers of the magistrates' court to have him arrested.

In the Divisional Court on December 20, 1955, the Lord Chief Justice pointed out the advantage of proceeding by way of a witness summons rather than by Crown Office *subpoena* when the case is before a magistrates' court. The Court was asked to grant leave to move for a writ of

attachment against a witness, said to be in Ireland, wanted in summary proceedings who had disobeyed a Crown Office *subpoena*. The Court granted leave in respect of the alleged contempt of court.

During the hearing of the application the Lord Chief Justice asked why the applicants, the Commissioners of Customs and Excise, had not obtained a witness summons, and was informed that it was usual for the Commissioners to issue a Crown Office *subpoena*. Counsel said that the power of a magistrates' court to deal with a witness who disobeyed was limited to imprisonment for seven days, to which Lord Goddard replied that it was enough, an observation that is borne out by experience, the mere threat of committal being almost invariably enough.

Another point made by counsel, according to the newspaper report, was that whereas a Crown Office *subpoena* ran throughout the United Kingdom, a magistrate's witness warrant ran only throughout the county. Even if counsel really said " country " and not " county," the point needs a little elucidation, which was no doubt included in counsel's argument.

Under s. 77 of the Magistrates' Courts Act, a justice may issue process against a witness who is in England or Wales, and so it is quite true that if the witness is known to be in Ireland a summons or a warrant could not be issued. If, however, a witness warrant has been lawfully issued and the witness goes to Ireland, the warrant can be endorsed and executed in accordance with s. 103 of the Act.

Generally, a witness summons, which can if necessary be followed by a warrant is, as the Lord Chief Justice said, speedily and easily enforced.

Removing Part of a Driving Disqualification

At 118 J.P.N. 773, P.P. 10, we expressed the opinion that when an application is made to a court under s. 7 (3) of the Road Traffic Act, 1930, to remove a disqualification, that court must either remove the disqualification completely or must refuse the application, *i.e.*, it cannot remove it as to the driving of certain classes of vehicles and leave it standing for other classes.

We note that it was decided in *R.* v. *Cottrell* [1955] 3 All E.R. 817, by Mr. Justice McNair that s. 7 (3) does not empower a court to vary the disqualification by removing it in part although the disqualification could be removed altogether. The matter came before the learned Judge on an application by a defendant who was convicted at Swansea Assizes in 1954 and was disqualified for driving any class of motor vehicle for five years. He was told at that time that if after one year had elapsed the court were satisfied with his behaviour it would not be out of keeping with the sentence that his disqualification should be varied to permit him to ride a motor cycle. He applied accordingly in November, 1955.

McNair, J., said that if he felt he had power to accede to the application he would have been prepared to do so. He quoted the relevant part of s. 7 (3) and added, " In that provision only two powers appear to be given to the court, *viz.*, a power of removing the disqualification, and a power to refuse the application." He referred then to the power given by s. 6 of the 1930 Act to limit a disqualification to the driving of a vehicle of the same class or description as that in relation to which the offence was committed, and added that although he thought the facts would justify a variation of the disqualification as asked for by the applicant, he did not feel that he had power to do anything other than remove the disqualification or refuse the application, and he accordingly refused it.

The learned Judge concluded by saying that there may be cases where it may be convenient that a court should have power to vary a disqualification, and that it is a question on which other minds might reach a different conclusion.

The New Valuation Lists

The new lists are on deposit and ratepayers are now able to ascertain what the valuation officer has in store for them. Certainly there will be shocks: for example, we are aware of many commercial undertakings where the proposed new valuations represent four- and five-fold increases over the present figures, and it is also certain that in some areas tenants of council houses will discover large increases in their assessments.

Although it is likely that ratepayers' discussions of the new assessments will chiefly revolve around the new individual figures, their pockets will be largely affected also by the way in which the percentage uplift of the total rateable value of one county or county borough compares with the corresponding aggregate figure for England and Wales. This aspect of the matter is almost completely unknown to the public but may easily be of greater importance than the rise in individual assessments: it is no exaggeration to say that in a number of areas fluctuations in rates equivalent to several shillings on current rateable values may be expected from this cause. It is also important to note that county districts within a county will almost certainly experience very uneven rises of total rateable values: a total uplift for a county of, say, 70 *per cent.*, may well include districts with rises varying between 40 and 150 *per cent.* This again will materially affect the payments called for from ratepayers in the different areas.

Some of the largest increases will occur in the Midlands area centred on Birmingham, in Wales and in certain agricultural counties. It must not, however, be too easily assumed that all the hereditaments on these areas have been consistently undervalued in the past: before conclusions of this kind can be drawn it will be necessary to examine the analysis of uplift as between different classes of hereditaments. For example, it is to be expected that big revisions of values will occur where there has been a great post-war growth of industrialization, oil refineries being a particular case in point. Obviously only a few authorities include these hereditaments in their lists but those who do are faced with a pretty problem of penny rate estimation because of the continuing fight about the rateability of certain plant and machinery, started in 1954 before the Lands Tribunal in the case of *Kent Oil Refinery Ltd.* v. *Walker*. On the final outcome very large figures of rateable value depend, but in so far as the immediate problem of penny rate calculation for 1956/57 is concerned probably most authorities will feel it wise to exclude these debatable items.

Welfare Services Grant

We have referred previously to the insignificant amount of the grant for hostel accommodation: it amounts to less than three *per cent.* of rate and grant borne expenditure whereas the normal grant on other services is of the order of 50 *per cent.*, as in the case of the children's service. Even when full allowance is made for contributions by residents made out of pensions paid from public funds, three-quarters of the total cost remains as a charge on rates, subject to relief by way of equalization grant if any such should be available.

The grant is on a unit basis, being calculated at the rate of £7 10*s.* for each single bedroom and £6 10*s.* in respect of each other bedroom times the number of persons which such room is intended to accommodate. Small as the grant is, a number of limiting devices have been incorporated in the National Assistance Act, 1948, and the regulations governing

its payment, which have the effect of dwarfing the amount disbursed still further: for example, s. 28 (2) of the Act lays down the conditions that the construction of the premises and any other premises forming part of the same building must have been begun on or after October 31, 1947, or that the premises must have been acquired on or after that day. It sometimes happens that local authorities acquire a building for one purpose but eventually appropriate it to some other use, for example, as a welfare hostel: hitherto on the argument that appropriation is not acquisition such a transaction has been held by the Minister of Health to justify non-payment of grant. Even in such a case a further refinement of finicking was introduced because if the premises remained unused until appropriation then grant was considered justified.

We are informed that some alteration of this attitude has now occurred: if the premises were originally acquired and used after October 31, 1947, for a purpose other than hostel accommodation and subsequently appropriated thereto, grant will now be payable. This belated concession is welcome, but it is amazing that it has taken so long to come because it seems obvious that in circumstances of this kind the authority is incurring a liability for the maintenance of the old to which it was not subject before October 31, 1947, and which should therefore rank for grant. Similarly, equity demands that premises acquired for another purpose before that date and subsequently appropriated should also secure grant.

The elimination of one obstruction from the red-tape jungle is obviously welcome but others remain: let us hope that 1956 will see further improvements.

APPEALS AGAIN

At 119 J.P.N. 70, under the title " Thoughts about Appeals," we referred *inter alia* to delays occurring where appellate jurisdiction is exercised by Ministers: delays often caused, we believe, by canalizing appeals in narrow channels. This arises partly from anxiety about creating precedents, and partly from the inherent vulnerability to political attack of every Minister's position—even where he is exercising an essentially judicial function. Upon this subject of delay, we are told by a local authority in the west, which is not the planning authority for its area, of a case where planning permission had been refused for a small housing scheme. The local authority appealed, and a public local inquiry was held early in September. When the local authority wrote to us they had been waiting for more than three months for the decision of the Minister of Housing and Local Government. Incidentally this will have meant that they were unable to start their housing scheme before the winter. We know nothing of the facts beyond what we have just stated; there may be something special, to account for what looks like an impediment placed in the way of the local authority for housing (which it might be expected would be supported by the Minister responsible for housing), by another local authority supported, at least to the extent of imposing more than three months' further delay, by the same Minister in a different capacity. At the foot of p. 71 above cited, we contrasted such delays with results obtained in appeals under the Road Traffic Act, 1930, which according to the information we then had were being disposed of with reasonable speed, through the employment of outside inspectors. Since we wrote this, our attention has been drawn by solicitors in the Midlands and in Lancashire to delays even under the Act of 1930. There must, in any event, be a gap between the decision of a licensing authority under s. 72 of that Act and the public hearing on appeal—it being assumed that a public hearing is a necessary feature, as distinct from letting the appeal be argued entirely on paper. Where there has to be a public hearing, arrangements have to be made; one of the panel of inspectors with experience of such appeals must be selected, and a date chosen when he can visit the locality, and in practice we believe the date so chosen is usually agreed with the legal advisers of all parties entitled to be heard. So much granted, all of which takes time, and then allowing a reasonable time for the inspector to write his report and think out his conclusions for presentation to the Minister, it might be supposed that subsequent stages in the Ministry of Transport and Civil Aviation would be soon concluded, especially in cases where the Minister accepts the recommendation made by his inspector. In fact, however, in some cases which have been mentioned to us by provincial correspondents who noticed the concluding passage in our above mentioned article, there have been quite serious delays. Since it is the practice, as we mentioned in that article, for the Minister to publish the report of his inspector (which is dated), it is possible to see how much time has been consumed between the public hearing and the eventual decision, first by the inspector who has to give a full report from his own notes of what was said at the inquiry, and to draw conclusions, and afterwards within the Ministry.

One of our correspondents, a solicitor with wide experience in the presentation of appeals of this class, suggests that the delay could be cut down, if not entirely cut out, by letting the decision be that of the inspector who has heard the case argued on appeal. To adopt this course would accord with the normal desire of persons trained in the English forensic method; they want to see and hear the judge and to be seen and heard by him. (This desire is in legal periodicals often said to be shared by the lay client, but we are not so sure of this. We suspect it to be born of the advocate's habit of mind.) Inasmuch as it is conceded that appeals under the Road Traffic Act, 1930, are not solely contests between the parties and that considerations of policy constantly come in, our correspondent further suggests that the inspector should be provided with an assessor from inside the Ministry of Transport, who would keep him straight about developments in the Minister's policy from time to time. The report of the inspector would be published, as it is today. It would be open to the Minister to dissent from it within a certain time, the reasons for dissenting being stated in a public document. Otherwise the inspector's decision would be final.

This suggestion is interesting, and may be worth attention from the committee now sitting to consider (amongst other things) ministerial appellate functions.

To us as at present advised it seems to have two weaknesses. First, the decisions of inspectors might go on different lines in different cases, according to the personal views of each inspector. (The same may be said, of course, of district audit and to a great extent of income tax administration.) We are not sure that transport undertakings, which often run through several traffic areas, would be content to have the decisions of the respective licensing authorities reviewed by individual inspectors. The result might be a succession of requests from such undertakings that the Minister would exercise his power of dissent. If this happened on a large scale, the last state would be worse than the first as regards delay, and the Minister would have to

evolve yet another method for dealing with such requests. Again, and parallel with the first difficulty, there is the problem of co-ordination in the general interest of road traffic. The appeal system of the Act of 1930 is based upon the view that there is a general public interest which must be looked at, at a national level. We, therefore, do not think this problem can be solved by delegating powers of decision; we think it must be solved by improving the internal machinery of Ministries, without interfering with the ultimate personal duty of each Minister.

COMMITTAL FOR SENTENCE WHERE ACCUSED HAD NO RIGHT OF TRIAL

[CONTRIBUTED]

In *R.* v. *Kent JJ., ex parte Machin* (1952) 116 J.P. 242, a conviction before a magistrates' court was quashed because the accused had not been informed of his liability to be committed to quarter sessions for sentence under s. 29 (1) of the Criminal Justice Act, 1948. The case underlines the importance of explaining this possibility to the accused whenever there is the statutory requirement to do so. Although, when the accused is addressed in the words of the statute, he very often appears puzzled as to whether they import "a threat or a promise," on consideration it is apparent that he is being warned that before he forgoes his right to trial by jury at quarter sessions, hoping perhaps to receive a lighter sentence in the magistrates' court, he should realize that if he has a "past" he may have bargained away his right for nothing. Where it requires the explanation to be given it is the clear intention of the statute that a person shall not be liable to the punishment a court of quarter sessions may inflict unless he not only has the right to be tried by a jury in that court, but also has been warned that, in certain circumstances, the apparent advantage of being tried in the magistrates' court may be illusory. It is surprising, therefore, to find that there is a class of case where a person may be committed for sentence without this possibility having to be explained to him; and where, moreover, the explanation would be superfluous, because there is not even the right to claim trial by jury.

How this may result can best be seen by considering a possible course in the trial of a specific offence of this class. Section 28 of the Road Traffic Act, 1930, provides, "(1) Every person who takes and drives away any motor vehicle without having either the consent of the owner thereof or other lawful authority shall be liable (*a*) on summary conviction, to imprisonment for a term not exceeding three months, or to a fine not exceeding £50; (*b*) on conviction on indictment, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding £100, or to both such imprisonment and fine: . . ." The offence created here is "both an indictable offence and a summary offence," as the two terms are defined by s. 125 of the Magistrates' Courts Act, 1952, to which s. 18 of that Act applies. It will be noted that the provisions as to committal for sentence contained in the Criminal Justice Act, 1948, are now re-enacted in the Magistrates' Courts Act, 1952, and the following references to sections are to sections of that Act. Section 18 provides that when dealing with the type of offence to which it applies the court shall "proceed as if the offence were not a summary offence, unless the court, having jurisdiction to try the information summarily, determines on the application of the prosecutor to do so." The accused has no say in the matter as to whether he is dealt with summarily or not; he certainly cannot claim summary trial, and so avoid the procedure to be traced here. Assuming first that the court has proceeded as if the offence were not a summary offence, s. 18 (3) provides that in such case, "if at any time during the inquiry it appears to the court, having regard to any representations made in the presence of the accused by the prosecutor, or made by the accused, and to the nature of the case, that it is proper to do so, the court may proceed to try the case summarily: . . ." It is important for the present inquiry to observe that the accused has no right to object to summary trial; he cannot claim trial by jury. Section 18 (6) only saves the right to trial by jury where this has been conferred by another enactment. If the court proceeds then under s. 18 (3), it will comply with the formalities required by s. 18 (4) and try the accused. Assuming that the court convicts the accused, its powers under s. 29 may now be considered. That section provides, "Where on the summary trial under subs. (3) of s. 18 or s. 19 of this Act of an indictable offence triable by quarter sessions a person who is not less than 17 years old is convicted of the offence, then, if on obtaining information about his character and antecedents the court is of opinion that they are such that greater punishment should be inflicted for the offence than the court has power to inflict, the court may, instead of dealing with him in any other manner, commit him in custody to quarter sessions for sentence in accordance with the provisions of s. 29 of the Criminal Justice Act, 1948." Thus, if the court proceeds, in dealing with this particular case, under s. 18 (3), and then exercises its powers under s. 29, the accused will find himself before the court of quarter sessions, awaiting whatever sentence it has power to inflict, without ever having had the right to be tried by a jury in that court.

The possibility indicated here appears so much at variance with the intention of the statute where the explanation of the court's powers under s. 29 is required, that it would seem necessary to examine those provisions to make sure that an offence of the class dealt with in this article is in fact outside their scope. The power to commit for sentence under s. 29 exists only where there has been summary trial under s. 18 (3) or s. 19. The class of offence dealt with here clearly comes within s. 18, and not s. 19, which applies only to the indictable offences specified in sch. 1 to the Act. It follows that where s. 19 (4) requires the explanation as to committal for sentence to be given this does not apply to s. 18 cases. The only other provision of the Act relating to the procedure to be followed on summary trial where committal for sentence may follow, is contained in s. 25, which gives the right to claim trial by jury where a person is charged with a summary offence for which he would be liable to be sentenced by a magistrates' court to imprisonment for a term exceeding three months. The offence here considered, that created by s. 28 of the Road Traffic Act, 1930, does not come within s. 25.

On this argument it may be deduced as a general rule that where the accused is charged with an offence which is "both an indictable offence and a summary offence," and is not one for which he would be liable on summary conviction to more than three months' imprisonment, he is liable to be sentenced by a court of quarter sessions without having had the right to trial by jury.

G.S.C.

FIRST STEPS IN CRIMINOLOGY

By THE REV. W. J. BOLT, B.A., LL.M.

Back volumes of the " J.P." have an unique value for students of criminology: no other journal illustrates so fully and vividly how English thought turned to the new line of speculation. The reason is that until about 1890, the journal was addressed more exclusively to the magistrates than today; and, until the Prisons Act of 1877, one of the more onerous responsibilities of the magistrates was the administration of the prisons.

No other periodical, whether professional or lay, reflects so richly the deep currents of misgiving among the magistrates over the efficiency of the existing penal system. Repeated violations of the law by so vast a legion of offenders stimulated the anxious query whether current penal methods were adequate to the presumed objective of deterring the convicted from offending again. This train of inquiry, which today we label penology, stimulated several legislative moves to save delinquents from the identified influences of the penal system, and equipped the courts with such new methods as probation, and differential treatment for juveniles.

But prevention is better than cure; and in due course speculation passed from the inquiry why offenders transgressed the law repeatedly to the question why they offended at all. This is the vast orbit of criminology.

Early reflexion established a number of principles which have been accepted as commonplaces ever since.

First, it must not be forgotten that the criminal law must have many limitations. Law is not the only form of social control. The impulses which keep the vast majority of us law-abiding, are not our fears of the consequences of violating the law. Other factors may be much stronger. Religious influence, whether you call it " conviction " or " tabu," is still a potent factor. Also, an individual may be motivated by strong moral habit which has no religious conviction behind it, and he is usually conditioned by the outlook and social customs of social groups, such as family, class, or profession, to which he belongs. Some people are influenced more by public opinion than by the bans of the legal system which is supposed to embody it. This is a complicated problem which we must explore before we can assess the usefulness of the criminal law in maintaining peace and order.

Again, the law may be in disrepute through having fallen out of step with public opinion. In theory, a statute remains in force until Parliament repeals it; but we may recall areas of the criminal law where enforcement is impracticable.

Then there are problems of law-enforcement which the public does not perceive. Prosecuting authorities may be aware of widespread breaches of the existing law, and yet know that, with so few police against so many offenders, and perhaps so big a section of public opinion, prosecution may be out of the question.

The study of criminology must start from this examination of the criminal law, and a clear understanding of its possibilities and limitations.

But that is no more than a beginning. The law provides only a list of offences and attendant penalties. Criminologists soon found that to understand the problem, they must concentrate attention on the personality of the offender. The interest of the older type of lawyer ceased at this point. He was concerned in justice as measured by the law of evidence. The point of his inquiry was: "Has an offence been committed?" He was not concerned with the reason or the motive. The personality of the offender was not relevant, unless he happened to belong to a few classes to whom the law might give a special immunity, such as an infant, a lunatic, or, in some circumstances, a married woman.

Criminologists were quick to perceive that if they would understand the nature and origin of crime, they must study the offenders. Early compilations of statistics completely disregarded this factor. Almost from the beginning of the nineteenth century, students attempted to draw conclusions from statistics; but the yardsticks they used, appear very primitive to us. It is significant that the law, by which I mean statutes and judgments, never talks of abstract " crime " but only of " criminal offences " and " criminal offenders."

So the science became quite early a study of people rather than of legal ordinances. It is a " social science," starting from criminal law and providing the materials without which criminal law cannot be safely handled.

To illustrate how criminologists amass their raw materials, we may usefully consider the two commonest methods in use, the statistical survey, and the individual-case method. These are complementary, and each enhances the possibilities of the other.

Many other lines of inquiry employ statistics; and most social organization and planning would be impossible without their guidance. When you can survey people or things in precise detail in the mass, you become aware of the existence of common factors that operate widely. One of the great classics of English criminology, Sir Cyril Burt's *The Young Delinquent*, published in 1925, is a noble specimen of this category. He was a Professor of Education in the University of London, and attempted an exhaustive study of 197 delinquents; and compared them with what we call a " control group " of 400 non-delinquents drawn, as fairly as he could find them, from the same schools and streets. His observations were magnificently planned, and he made all allowances for possible objections to the details he selected. The law as he states it is now very much out of date, and the provisions of the Welfare State have made the factors in his reckoning somewhat obsolete; but as a monument to the use of statistics in assessing the factors which make for delinquency, Burt's work is imperishable. He pursues no propaganda, preaches no sermon, and draws no dogmatic conclusion. He marshals all his unravelled facts impassively and impartially, and allows them to speak for themselves.

It cannot be said that his book " proves " anything. He notices the persistence of certain contributory factors in a high percentage of the cases examined, and leaves the question there. Then we look across the Atlantic to similar surveys attempted in specific American cities on parallel lines; and a comparison of their results with what Cyril Burt found in the delinquents in L.C.C. schools gives us a wider view of the nature and causation of juvenile delinquency than we could have gained from English sources alone.

A similar mass-survey was presented in Dr. Mannheim's *Juvenile Delinquency in an English Middletown* (Routledge, 1948), where we see in contrast the effect of sweeping economic changes. Yet certain factors retain their prominence, despite the tides of social change; and as we assimilate the wealth of factual material presented to us in survey after survey, we cannot but be moved by pity or contempt for the blithe spirits who venture to

dogmatize so lightly and readily on the topic whose immensity emerges.

But statistics have their limitations; and the wise student of criminology knows all about them. Much of the constitution of human nature is immeasurable, and baffles statistical analysis. The individual's physical dimensions, intelligence quotient, and arithmetical records must always fall short of presenting a full picture of his elusive personality, and the researchers in this field never let out of their sight the enigma why so many juveniles from identical homes, parents, schools, and general environment, remain non-delinquent. Skilled criminologists never forget the reserve with which they must use any conclusions derived from the statistical method; but they contend nevertheless that it has a very positive value.

When the Home Secretary addressed the recent annual meeting of the Magistrates' Association, he claimed that, after more than a century of practice, Home Office experts were attaining higher standards of efficiency than before. I believe he was entitled to make this claim. So far as I can see, the Home Office has kept abreast of outside statistical authorities in producing statistics of the highest possible usefulness to the students of crime; but they cannot be read or interpreted without a technique that comes only from experience. We must distinguish between court statistics and police statistics; and read both only in the light of our knowledge of criminal procedure. There are more offenders at large than are convicted or even prosecuted. Prosecuting policy is an elusive subtle factor of which the man in the street knows nothing at all.

We meet, for instance, a widespread impression, with little factual evidence to support it, that the police are increasingly reluctant to bring delinquents before the children's courts. Nobody but police authorities can confirm or deny this affirmation. If it is true, it may throw light on recent statistics which the public have interpreted as a decline in the incidence of juvenile delinquency.

The complementary approach to the raw material is known as the individual case method. It seeks to study the individual through a period of his life, to establish correlations between his development and successive influences under which he passes. The best examples of this method are *The Use of Personal Documents*, by Professor Allport, of Harvard, and *Brothers in Crime*, by another American, Clifford Sharp.

The English public have always shown a great appetite for one type of case-study, of limited scope—reports of criminal trials. These are sensational, and not scientific enough to be of much use to the genuine student. Most studies of prison life have little value for the criminologist. They study the subject in abnormal conditions which cannot throw much light on the nature of criminality. Prisoners of war became aware of the pathetic condition now identified as " prison psychosis " which carries all the symptoms familiar in our studies of prisoners in custody. Psychologists are well aware that a vast development in mental condition may occur in the criminal between the time of committing the crime and the imprisonment; and sensible criminologists do not attach much weight to this popular type of case-study.

Its limitations are all too evident. Its scope is so circumscribed. With the ordinary adult offender, one could not observe the personal factors before and at the time of the offence without, if such esoteric knowledge were possible, incurring a duty to prevent his activity. Case-studies are most practicable with offenders on probation or under the supervision of after-care authorities. And it must be remarked that a readiness to give the intimate information which alone can be of any scientific value, is much more pronounced in the exotic climate of the United States than here. That startling contrast in national temperament caused wide amazement when the Kinsey reports reached these shores. Many readers were astounded that intimate details of private lives could be disclosed so candidly; and criminologists observe the same trait in the confidential evidence furnished in American case-studies.

American criminologists pay much more attention to the prison population than do our own students. It is always in the forefront of our consciousness that, since so many offenders escape prison, those in custody represent only a small cross-section of the truly criminal class.

The two modes of research are not competitive but complementary. The researcher in each is always aware that his professional equipment owes much to the conclusions of the other approach. The psycho-analyst analyses one case only by the experience he has derived from a legion of other cases. Some case-workers are scornful of a method which tends to treat offenders as types rather than as individuals. Sociologists retort that although no two leaves on an oak-tree may be exactly alike, yet all the thousands of leaves on that tree have common features which could not be found in any one leaf of a sycamore-tree. Despite the vast variety of human individuality, we are all mass-conditioned and more influenced by common pressures than the unheeding realize.

This is a difficult and technical subject; but I feel bound to protest against the glib readiness of the outside public, to deride psychiatrists and sociologists as pedants and cranks. In stripping down the mechanisms of the human mind and emotions, in clarifying the inter-relations between the individual and his social setting, these two sciences have placed the problem of crime in a perspective the absence of which makes the shrewdest theorizings of last century sound like primitive and infantile babblings.

This is not to argue that the bulk of our offenders can be cured of their tendencies by psychiatric clinics, or that the social disease can be cured by environmental adjustments. I believe that the true remedy lies well away from both, but nevertheless, I insist that the disease cannot be understood or visualized in its plenitude without the assistance of all the information that the two sciences can offer us.

The evil is more complex than the sleek headlines of our daily newspapers depict. Mankind has more powers and resources today than the Greeks credited to their gods. We become more civilized, in our own reckoning, and yet the menace of crime to human peace and happiness does not become less sinister. On the contrary, the incidence of avoidable danger and horror in human life increases from year to year. Lest this should cause us to despair, we may derive consolation from recalling that criminology is only in its first decades. Amongst all the objects that have challenged the human intellect, this deliberate effort to diagnose and understand a great communal evil is relatively new. The historic attitude of communities and philosophies now appears to startle us; as though crime must be as inevitable a concomitant of human existence as death itself. It seemed to be the world-wide presumption that communities could do nothing about crime except to try to warn potential offenders away by grim deterrence. It may amaze us that the underlying notion of criminology was so late in dawning upon human intelligence, but there are more revolutionary ideas which are even newer still.

The outstanding reactions of public opinion last century to proposals for penal reform were precisely the attitudes of some schools of thought to criminological notions today. If the *status quo* was abandoned or altered, the heavens would fall, and the sacred pillars of law and order would collapse in irretrievable destruction. But the measures were adopted, and the prophets were not confounded.

COUNCIL HOUSE OR FOOL'S PARADISE

[CONTRIBUTED]

" An Englishman's home is his castle but not on a council estate," sums up criticism of local authorities as landlords of council houses. In the latest case on the subject *Smith and Others* v. *Cardiff Corporation* (1954) 119 J.P. 128, Danckwerts, J., pointedly referred to the privileged position of local authorities, free from the harassing frustration of the Rent Restrictions Acts. The Lord Chief Justice has illustrated the position in more forcible terms, suggesting in *London County Council* v. *Shelley* [1947] 2 All E.R. 320; 111 J.P. 487, that tenants of local authorities were living not only in houses but also in fools' paradises, seeing that they had not that security of tenure which the Rent Restrictions Acts give. Later, in *Jenkins* v. *Paddington Borough Council* (*The Times*, May 12, 1954), Lord Goddard, C.J., pointed out that a local authority can get rid of a tenant if they do not like the colour of his eyes, and furthermore that it was impossible (following *Shelley's* case) to find a way of preventing a local authority, if they wished, from getting possession of their property for a good or perhaps a bad reason. The *Paddington* case prompted the pronouncement, from one of the leading but more sober minded Sunday newspapers, that if there were no hard and fast rules limiting the sovereign rights of local authorities in this respect it was perhaps time that some were laid down by the Ministry. More extreme but less well informed criticism urges a revision of the powers of eviction held (and, it is alleged, frequently abused) by local authorities, on the footing that, whilst it is almost impossible for a private house owner to obtain an eviction order, " bureaucracy " (apparently synonymous with local authorities) can do so without giving any reason at all, and deplores the unfortunate lot of council tenants who have no rights in law against any burden which the housing committee may impose upon them.

Tenants under the Rent Restrictions Acts enjoy virtual security of tenure and cannot be evicted without a court order made on certain limited grounds, and then only if the court considers it reasonable to do so. Section 156 (1) of the Housing Act, 1936, provides, however, that nothing in those Acts shall be deemed to prevent possession being obtained of any house possession of which is required for the purpose of enabling a local authority to exercise their powers under any enactment relating to housing (the former reference to the housing of the working classes having been jettisoned by the Housing Act, 1949). In *Shelley* v. *L.C.C.* [1948] 2 All E.R. 898; 113 J.P. 1, which is now the leading and authoritative case on the subject, the House of Lords (Lord Du Parcq dissenting) held that the power to terminate a tenancy by notice was within " the general management, regulation and control of houses " expressly vested in the local authority by the Housing Act, 1936, s. 83, and was, therefore, a power under an " enactment relating to (the) housing (of the working classes) " within the meaning of s. 156 (1), so as to exclude the operation of the Rent Restrictions Acts where the authority was seeking to recover possession at the termination of a tenancy. The case further decided that s. 1 of the Small Tenements Recovery Act, 1838 (under which local authorities may, by virtue of s. 156 (2) of the 1936 Act recover possession whatever the value or the rent) did not bestow on the magistrate a discretion as to the granting of a warrant, based on the personal position of and hardship to the individual tenant, nor was there any power in the magistrate to postpone the execution of the warrant at his pleasure, since the Act stipulated that the warrant should command the constable to enter not more than 30 days after its issue. The Divisional Court has since *Shelley* v. *London County Council* had occasion to correct justices in different parts of the country, and what was described as a defiance of the law by justices who refused the local authority a warrant for possession under the Small Tenements Recovery Act was connected, in *Stott* v. *Smith* (1949) 113 J.P.N. 502, with an expression of the Court's regret that they were unable to mulct the erring justices in costs. Paradoxically the house in *Shelley* v. *L.C.C.*, being one built before 1919, was conceded at the time of the decision to being subject to the Rent Restrictions Acts in that the authority were subject to the obligation not to exceed the statutory rent, although successfully arguing that they were under no corresponding obligation to retain the tenants as statutory tenants.

As regards increases in rent, the council house tenant has a legal right to reasonable rents and charges on the part of his landlord local authority. This presupposes his being able to get to grips with them; in the first *Cardiff* case (*Smith and Others* v. *Cardiff Corporation* [1953] 2 All E.R. 1373; 118 J.P. 33) the Master of the Rolls touched on the reluctance of an individual weekly tenant to embark alone on litigation, for fear that he might forthwith be served with notice to quit and then be met with the objection that he had no subject matter which enabled him competently to maintain his action. On the question of procedure, a representative action by a number of tenants, although conceded in *Belcher* v. *Reading Corporation* [1949] 2 All E.R. 969; 114 J.P. 21, was held in the *Cardiff* case (where the corporation were less accommodating) to be inapplicable, although the plaintiffs could proceed as individuals and the action be treated as a test one. Section 3 (2) (*c*) of the Rent and Mortgage Interest Restrictions Act, 1939, provided that the principal Acts should not by virtue of that section apply to any dwelling-house in respect of which a local authority for the purpose of part V of the Housing Act, 1936, were required by s. 128 of that Act to keep a housing revenue account, *i.e.*, houses provided by them under that part of the Act since February 6, 1919. As an alternative to rent control, s. 83 of the Act of 1936 provides that a local authority may make such reasonable charges for the tenancy or occupation of the house as they may determine, but should (before the passing of the Housing Act, 1949) in fixing rents take into consideration the rents ordinarily payable by persons of the working classes in the locality, and may (s. 85 (5)) grant to any tenant such rebates from rent, subject to such terms and conditions, as they may think fit. In *Belcher* v. *Reading Corporation*, *supra*, Romer, J., held that the question whether the local authority's decision to raise the rents could be impeached, as being in conflict with s. 83, depended not on whether it might have been preferable to charge this or that item against the ratepayers as a whole, or to have apportioned it in some manner between them and the tenants, but on whether the increased rents were " reasonable," as s. 83 (1) required them to be. In dealing with these matters it was the authority's duty, so far as possible, to maintain a balance between the interests of the ratepayers as a whole and those of the council tenants, having due regard to any specific requirements of the Housing Acts. Danckwerts, J., in *Smith and Others* v. *Cardiff Corporation*, *supra*, upheld the corporation's differential rent scheme based on the income of individual tenants, pointing out that the changes of particular rents of particular houses which the corporation might adopt, when complying with the duty imposed upon them by s. 85 (5)

(to review rents from time to time and make such changes either of rents generally or of particular rents and rebates, if any, as circumstances might require) including the grading up of rents of particular tenants (surcharges up) or the reducing of the rents of particular tenants (rebates down). The reasonableness of charges made by the local authority was nevertheless open to review by the court because by s. 83 (1) the charges were required to be reasonable in fact, and not merely reasonable in the opinion of the local authority, with, however, the onus of showing that they were not reasonable resting on the person asserting their unreasonableness. He accordingly held that the method of surcharging the tenants of particular houses according to their income was not *ultra vires* and the corporation's scheme, though not perfect in operation, was in the circumstances not unreasonable, and was therefore valid.

Distress, the old extra-judicial but nevertheless effective remedy for recovery of arrears of rent, is also available to local authorities by reason of their comparative freedom from the operation of the Rent Restrictions Acts, although not extensively resorted to in practice.

Demands that all council houses should be brought within the scope of the Rent Restrictions Acts are not new, and the *Justice of the Peace and Local Government Review* itself has commented on the peculiar privilege given to local authorities as landlords in comparison with the landlords of houses protected by these Acts. Recalling a minority recommendation of one of the committees appointed to consider the operation of the Acts between the wars, the *Justice of the Peace and Local Government Review* suggested at 118 J.P.N. 496 that it would be a good thing to put all property owners on the same footing as regards the grounds on which they might claim an eviction order.

Parliament had the opportunity on the passing of the Housing Repairs and Rents Act, 1954, to alter the position, but, far from taking it, extended the "privilege" of local authorities by deliberately exempting (s. 33) all tenancies by all local authorities from the Rent Acts, with a similar exemption of lettings by new town development corporations and certain housing associations and housing trusts. As a result, houses of local authorities which were not council houses as commonly understood, and which had previously been restricted as to both possession and rent, were entirely removed from the operation of the Acts, as were the exceptional class of pre-1919 council houses which had previously been restricted as to rent but not as to possession. A further consequence of the Act was to remove the anomalies which had previously arisen on the acquisition by local authorities for housing purposes of former rent restricted houses, which, depending upon whether they had previously been the subject of new or old control, could or could not have their rents raised after passing into the ownership of the housing authority.

Although there appears to be agreement between the Court of Appeal and the House of Lords (as the highest judicial tribunals) and Parliament (as the sovereign legislative assembly) on the reasons for the privileged position of local authority landlords, these reasons are not apparently as well known and appreciated as the actual privileges themselves. If the position were otherwise it would, as Lord Greene, M.R., demonstrated in *Shelley's* case [1947] 2 All E.R. 720; 112 J.P. 77, result in management being shared between the local authority and the courts, which was not intended by Parliament. The late Master of the Rolls at 2 All E.R. 722, said: "The object of the Rent Restrictions Acts was to protect the poorer class of tenant from either being ejected from his house or being compelled to pay a higher rent by reason of the housing shortage and the general economic situation. The ordinary landlord might be expected to take advantage of the economic situation by trying to get a higher rent for his houses. The Rent Restrictions Acts prevented that. Local authorities, however, and particularly in the case of working class dwellings provided by them, stand in a totally different position. They are, socially, much more responsible landlords. They are subject to criticism by members of their own body and by ratepayers outside. They are entrusted by Parliament with the specific duty of providing housing accommodation for the very class to which the Rent Restrictions Acts principally apply. They may be trusted, one would have thought, to exercise their powers in a public-spirited and fair way in the general public interest, and without any flavour of what, without offence, I may call profiteering . . . I find nothing unreasonable or anomalous in Parliament deciding to free local authorities, into whose hands it places the charge of taking steps to provide working class accommodation, from the operation of the Rent Acts. I see nothing unreasonable or anomalous in their being trusted by Parliament to avoid committing the sort of social or economic crime, or whatever one likes to call it, that the ordinary landlord was expected to commit . . ." This view was evidently shared in the House of Lords by Lord Porter, who commented: "It is, to my mind, one of the important duties of management that the local body should be able to pick and choose their tenants at their will. It is true that an ordinary private landlord cannot do so, but local authorities who have wider duties laid on them may well be expected to exercise their powers with discretion."

The House of Commons, on their consideration of the Housing Repairs and Rents Act, 1954, accepted as obvious the case for excluding all local authorities and not merely housing authorities from the Rent Restrictions Acts, although the effect was to deprive still more tenants of their previous two-fold protection, as regards security of tenure and increase of rent. Local authorities as landlords were publicly elected and publicly accountable. The House was rather more hesitant in affording a similar exemption (although ultimately conceded) to new town development corporations and housing associations whose tenants, as it was pointed out, would be left entirely without protection, not having the legal protection existing against a private landlord or the protection afforded by the ballot box against an elected local authority. As elected bodies, local authorities were subject to public control, and if they did anything unreasonable or unfair were amenable to public pressure and could be brought to book at an election. While local authorities were near to public resentment of any unjust act, the same could not be said of development corporations and housing associations, who from their nature were not sensitive to a local electorate and, not being subject to the same motives and compulsions as local authorities, were suspected of a possible bias in favour of their business duties, to the detriment of their social responsibilities as good public landlords.

It is not perhaps surprising that the elected branch of Parliament, sovereign in legislative power subject to the sanction of public opinion, was willing to accord a greater measure of trust and confidence than is forthcoming in other quarters to local authority landlords who, within their own areas, are subject to a similar sanction. A local authority's complete immunity from the Rent Acts is tempered nevertheless by the Reserve and Auxiliary Forces (Protection of Civil Interests) Act, 1951, where a tenant who is a service man has a period of residence protection. The Act applies to local authorities in common with all other landlords.

The recent report of the Housing Management Sub-Committee of the Central Housing Advisory Committee suggests that in practice some 2,500 families out of a total of 2½ million

tenancies leave council houses each year as a result of notice to quit, representing a proportion of 0·1 *per cent*. Tenants, the sub-committee found, are more often evicted for arrears of rent than for any other reason, because of the effect on other tenants if they were to see that some could refuse to pay rent with impunity. The statutory obligation laid upon local authorities by s. 85 (2) of the Housing Act, 1936, to give a preference in selecting their tenants to large families and those living in overcrowded or insanitary conditions, definitely limits, as the sub-committee points out, the freedom of local authorities to reject the potentially unsatisfactory tenant. They conclude, however, that local authorities do not resort to eviction except under extreme provocation, and that they do in practice accept responsibility as public bodies towards even those families who seem least willing to appreciate the homes they occupy and make proper use of them.

The council house tenant, although his lot in law is unenviable, has nevertheless been regarded in practice as fortunate in his enjoyment of a decent house (as council waiting lists show) at a subsidized rent. As long ago as 1934 the Lord Chief Justice (then Goddard, J.) said in *Leeds Corporation* v. *Jenkinson* (1935) 98 J.P. 447, that the object of the Housing Acts was to provide houses for those classes of the community who could not afford to pay economic rents, and not to provide subsidized houses for people who could afford to pay economic rents, and few will quarrel with the view of the present Minister of Housing and Local Government that large numbers of council house tenants are today having their rents subsidized to a greater extent than their financial circumstances require. Not all, however, will agree with his advocacy of differential rent schemes although these are judicially sanctioned and commended by the Housing Management Sub-Committee. In their previous report on transfers, exchanges and rents the sub-committee examined the implications of schemes for rent rebate, additional earner or lodger charge, rent surcharge and differential rents, and favoured differential rent schemes (operated by some local authorities—albeit a minority—of different type and political outlook), as the preferable method of applying housing subsidies to the fullest advantage. By such schemes the hardship entailed by an all-round increase of rent, necessary to balance housing accounts because of high building and maintenance costs and a growing preponderance of expensive post-war houses, can be offset by requiring those tenants who can afford it to pay more rent, so that those who are hardest up pay less. The Government now hope that housing authorities will charge rents more in line with the current level of wages and present money values, and offset hardship by the adoption of differential rent schemes. To this end the Housing Subsidies Bill will reduce the exchequer subsidy, and enable the Minister by order to abolish or reduce the rates of subsidy on houses provided by local authorities for general needs. The complementary proposal to relieve local authorities from April 1, 1956, of their present obligation to make rate fund contributions towards the cost of providing houses is a strong incentive to them (to be acted upon or not at their individual discretion) to put their housing accounts on a self supporting basis, and relieve their general rate fund to the extent to which they are able to do so. Thus the blatant gap between the council house tenant's privileged material position and his unfortunate legal one is likely to be narrowed. K.H.C.

DUSTBINS AT LAW AGAIN

[CONTRIBUTED]

From the decision of the Divisional Court in *Peterborough Corporation* v. *Holdich* [1955] 3 All E.R. 424; 119 J.P.N. 784, it appears that, after all, s. 8 (4) of the Local Government (Miscellaneous Provisions) Act, 1953, has stopped the gap in s. 75 (1) of the Public Health Act, 1936. The latter section enables a local authority, who have undertaken the removal of house refuse, by notice to require the owner or occupier of any building to provide such number of covered dustbins for the reception of house refuse as the authority may approve. A right of appeal lies under this section to a court of summary jurisdiction by any person aggrieved. The difficulty which was experienced under these provisions arose from the fact that if the local authority served the owner with a notice, and he appealed successfully, and then they served the occupier, there was nothing to prevent the justices from allowing his appeal also. The action of the local authority could thus be stultified.

To overcome this difficulty s. 8 (4) of the Act of 1953 provides that, where an appeal against a dustbin notice is made on the ground that it is not equitable that the appellant should provide the dustbin, the appellant shall serve a copy of his notice of appeal on the other person concerned, *i.e.*, the owner or occupier as the case may be. The section then goes on to provide that on the hearing of the appeal the court " may make such order as it thinks fit with respect to the compliance with the . . . notice either by the appellant or by the said other person." The object of these provisions was clearly to prevent the justices from allowing two separate appeals and leaving the local authority powerless to require either the owner or the occupier to provide the dustbin.

It was thought at the time that by virtue of s. 8 (4) of the Act of 1953 the justices were obliged to make an order to require either the owner or the occupier to comply with the notice. The Wood Green justices appear to have been the first bench to take a different view. In the case of an appeal by an owner against a notice by the Southgate borough council, requiring him to provide a dustbin, they allowed the appeal and refused to make an order requiring the tenant to comply with the notice. This case is noted at 117 J.P.N. 626. The justices took the view that, as s. 8 (4) of the 1953 Act provided that the court " may make such order as it thinks fit," the provisions were permissive and did not require them to make an order at all. The effect of this decision, if it had proved to be sound in law, would have been to have made s. 8 (4) of the Act of 1953 a waste of legislative time and effort.

The *Peterborough* case has, however, proved the justices' view to be wrong. As in the *Wood Green* case the Peterborough justices found that it was not equitable to make an order requiring an owner to provide a dustbin, so they allowed his appeal and declined to make an order requiring the occupier to provide the dustbin. Against this decision the local authority successfully appealed.

It was argued for the justices that the use of the word " may " in s. 8 (4) of the Act of 1953 gave them a discretion to decide whether to make an order or not. They also sought to urge upon the Divisional Court the view that, as under s. 75 (3) of the Act of 1936 the local authority could themselves provide dustbins and make charges for such provision, the justices could refuse to make an order, and thus leave the local authority to

provide the dustbin in exercise of those powers. It appears to have been contended, therefore, that on an appeal against a dustbin notice the justices were expected to make a decision as to which one of three parties, the local authority, the owner, or the occupier, should provide the dustbin.

Neither of these arguments found favour with the Divisional Court. They held that s. 75 (3) of the Act of 1936, which provides that a local authority may " as respects their district or any part thereof " instead of requiring the owners or occupiers to provide dustbins provide them themselves, enables a local authority to undertake the provision of dustbins for a district but not for a particular house. Thus, where the local authority has not undertaken to provide dustbins in its district, or part thereof, no issue can arise on an appeal against a notice as to whether the local authority on the one hand, or either the owner or occupier on the other hand, should provide the dustbin. The Court also held that on the true construction of s. 8 (4) of the Act of 1953 the justices were required to make an order on either the owner or the occupier, once they had found that no adequate dustbin was provided at the premises. The word " may " is used in s. 8 (4) to cover the possibility of the justices refusing to make an order because, in fact, an adequate dustbin had been provided, but where no such provision has been made the word becomes " must " and the justices are bound to decide between the owner and the occupier.

" BOUEUR."

WEEKLY NOTES OF CASES

COURT OF APPEAL

(Before Sir Raymond Evershed, M.R., Birkett and Romer, L.JJ.)

GREAT YARMOUTH CORPORATION *v.* GIBSON

December 15, 16, 1955.

Sewer—Recovery by local authority of cost of maintenance—Jurisdiction of county court—Public Health Act, 1936 (26 *Geo.* 5 *and* 1 *Edw.* 8, *c.* 49), *s.* 24 (1) (3), *s.* 293 (1).

APPEAL from Great Yarmouth county court.

By an action in the county court the local authority sought to recover under s. 24 (1) of the Public Health Act, 1936, the apportioned cost of the maintenance of a length of a sewer serving, *inter alia*, premises of which the defendant was the owner. By s. 293 (1) of the Act a local authority may recover any sum under the Act " with respect to the recovery of which provision is not made by any other section of this Act "either summarily as a civil debt or in any court of competent jurisdiction. By s. 24 (3) of the Act it is provided: " Any question arising under this section . . . may be determined by a court of summary jurisdiction either in proceedings taken by the local authority for the recovery of expenses incurred by them, or on the application of any owner concerned." On a question as to the jurisdiction of the county court

Held (BIRKETT, L.J., dissenting), no provision was made in s. 24 for the recovery of the expenses incurred by a local authority under that section, and, therefore, the county court had jurisdiction to entertain the action.

Appeal allowed.

Counsel: *Boydell* for the corporation; *Laskey* for the owner.

Solicitors: *Sharpe, Pritchard & Co.*, for *Farra Conway*, town clerk, Great Yarmouth; *Smith & Hudson* for *Wiltshire, Sons & Tunbridge*, Great Yarmouth.

(Reported by F. Guttman, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

CHICHESTER R.D.C. FINANCES, 1954/55

The treasurer of the rural district council, Mr. A. R. Hayman, has sent us a copy of his authority's accounts for the last financial year, excellently stencilled and setting out the main features of the year's working clearly and concisely.

The rural district is part of Sussex by the sea: it has an area of 103,000 acres, a growing population (latest figure 46,000), and a rate of 19*s.* 2*d.*, which represents to a ratepayer living in a house of £20 rateable value a weekly charge of 7*s.* 4*d.* One of the special features of the district is a number of caravan sites and encampments: in fact, the treasurer particularly distinguishes rate arrears in respect of these sites in his report, pointing out that caravan arrears at March 31, were £1,730 and all others £1,210, representing percentages of the total rates to be collected of ·43 and ·30 respectively. During the year the council received a contribution of £700 from West Sussex county council towards the cost of caravan sites revaluation.

The general district fund balance increased during the year by £4,600 to £36,800, largely represented by cash. Capital cash was overdrawn pending the raising of loans particularly for housing although considerable amounts of capital expenditure were incurred on sewerage (£45,000) and coast protection works (£33,000). The county council pay about half of the loan charges on the latter.

The rural council is to be congratulated on the results of its salvage efforts, sales of salvaged materials at £6,000 being £1,400 in excess of expenditure on collection.

Loan debt totals £2¾ million of which slightly over £2 million is for housing.

The council has built nearly 2,000 houses—about one-seventh of the total number of houses and flats in the area. Rents vary according to whether houses were built before or after the war, for example, rents of pre-war three-bedroom parlour houses vary from 14*s.* 3*d.* to 14*s.* 9*d.*, the corresponding rent for a similar type post-war house being 17*s.* 6*d.* The housing service is well managed: there is a surplus of £3,000 on the revenue account and £21,000 on the repairs account.

Like most authorities the council has not been very successful in selling houses, only two having been disposed of in two years.

Considerable amounts have been advanced on mortgage: during the year under review 63 applications for loans were approved and the amount advanced was £78,000.

There was a small deficit of £310 on the water undertaking.

It is evident that the finances of the authority are sound: we feel that the chairman of the finance committee (Mr. William H. Oliver) and his colleagues should be satisfied with the year's results.

DARLINGTON WEIGHTS AND MEASURES REPORT

In a generally satisfactory report on weights and measures inspection, Mr. R. Billings, chief inspector of the county borough of Darlington, calls attention to the importance of guarding against shortages and shrinkages, which indirectly add to the cost of living. It has been pointed out in many reports that shortages in pre-packed foods are often due to evaporation which may be caused by inadequate packing. Mr. Billings would like to see control extended to more articles and to wholesale as well as retail transactions.

There are two interesting items dealing respectively with petrol and fireguards, both safety measures. Tanks that have been underground for 20 years or more are now subjected to a 24-hour leakage test put on by the officers. During the year 31 tanks were dealt with, of which two were found to be leaking. Both of these were neutralized, one being put out of use and filled completely with sand before covering in.

In order to check that the requirements of the Heating Appliances (Fireguards) Act, 1952, were being observed, a total of 66 visits were made to premises where gas, electric or oil fires are kept for sale. In case of doubt requests for submission to the office for test were made to traders and 24 fires were so dealt with as prescribed.

THE NUFFIELD FOUNDATION—TENTH REPORT

During the year ended March 31, 1955, the Nuffield Foundation made grants totalling £681,397, which is nearly treble the figure for 1943. Without diminishing the sums expended on research and experiment within the United Kingdom it has been possible to extend

the Foundation's interests gradually to the other parts of the Commonwealth. The report gives a detailed account of the grants made over a wide field. In the hospital sphere, following the publication of its report on the functions and design of hospitals, consideration is being given to the study of children in hospital and expenditure is being incurred in erecting certain experimental hospital units.

The largest single part of the year's grants for medical research was devoted to further fundamental work in the chronic rheumatic diseases, financed in part from the income on the £450,000 Oliver Bird Fund and in part from the Foundation's other resources. One project of special interest is research into the causes of certain types of mental deficiency. This proceeds from the recently established fact that many cases of mental deficiency, especially those associated with epilepsy or paralysis, are due to sudden damage to the brain by vascular disturbance at or near the time of birth. The research is being undertaken at Bristol by co-operation between the university, and the research committee of the South Western Regional Hospital Board, the teaching hospital group, and the regional hospitals in the area.

Social work

In describing a research study being undertaken in Shoreditch, London, it is pointed out that over-specialization is one of the evils which accompany the growth of knowledge and skill in a variety of fields. It tends to encourage a narrow and impersonal approach which is particularly out of place where the health and welfare of human beings are concerned. In the field of social work it has led to different specialists focusing their attention on particular aspects of social breakdown—often without co-ordinating their efforts. Each assesses the family's background against the need of a particular member of the family. They may have opposing ideas on what should be done and thereby create conflicts for themselves and for those under their care. It was felt by those advising the Foundation in this matter that too little attention is paid to the structure and needs of the family as a whole. A problem family may receive the attention of several kinds of social workers whose services overlap, but none of these workers will be able to get in touch with a family until its particular specialty is needed. It is thought that the difficulty of taking preventive rather than executive action is to some extent a result of excessive specialization; and that a general case-worker, introduced to the family at an early age, might have a better chance of dealing with incipient problems before they became chronic. In Shoreditch a committee has been formed whose aim is the promotion of the mental health of families and the prevention of maladjustment, unhappiness, and family breakdown. The committee hopes to develop important techniques for identifying family difficulties at an early stage, and of bringing together the various agencies already working in the field. It also wants to assess the advantages which can be derived from a complementary use of group-workers and case-work techniques. The child's behaviour reflects the well-being or the difficulties of his family, and the school teacher is in a good position for spotting the unsettled child. He may refer a child to a social worker, but there is at present little basis for co-operation between the teacher and the professional social worker. If this could be established, both parties would gain a better insight into the problems with which they are faced and a better understanding of the contribution the other can make in solving them. A relationship of confidence with the teacher may enable the social worker to come into contact with families at an early stage, when it is still possible to prevent difficulties from becoming major social problems. Co-operative experiments on these lines would later be extended to other professional workers concerned with the well-being of families, such as health workers and general practitioners. The Foundation has offered a grant of £2,600 a year for five years to enable this experiment to be launched. The result will be awaited with interest by many who are concerned at the overlapping of social workers which now exists.

Miscellaneous projects

Turning to miscellaneous projects, attention is drawn to the difficulties in which many learned journals find themselves owing to rising costs. It is pointed out in the report that a number of journals can only be published because the publishers bear most of the financial risks. It is thought that the only hope of narrowing the gap between costs and returns lies in improving production and sales techniques and in some measure of centralization of effort. A sum totalling £43,750 over five years has therefore been set aside for assisting certain learned journals and as a first step a pilot survey of existing publishing and distribution practices of certain journals is to be carried out.

Another interesting, but quite different, type of scheme to which a grant of £5,000 has been made is the Methodist International House at Liverpool, which is being run as a home for students, of whom about two-thirds are from overseas. A link is also formed with a large number of private homes, where students are welcome for week-ends and holidays.

In the child-welfare sphere, the Foundation was responsible for pioneering work in establishing a reception centre for children coming into the care of local authorities, as recommended by the Curtis Committee. A balance of £2,600 of the original grant remaining unexpended is to be used to establish an experimental remedial education centre where children will be received from foster homes and children's homes in the neighbourhood. The scheme is an experiment undertaken for purposes of research and it is hoped that after 18 months or two years the local authority will be sufficiently convinced of its usefulness to establish a remedial educational centre of its own.

In this short review of a long and comprehensive report attention has been drawn to a few matters which are of special interest to those concerned in various kinds of social welfare and educational activities, whether as local authorities or as voluntary organizations. Lord Nuffield can be rightly proud of the work being done by the Foundation and glad that when the trust deed was drafted it was drawn so widely as to cover so many objects.

LONDON CHILDREN'S DEPARTMENT

The work of the Children's Committee of the London County Council is to be decentralized by transferring much of its work to three district committees. Each committee will be responsible for boarding out and the administration of the various residential nurseries and homes in their areas. The magnitude of the work of the department is shown by the fact that since 1948 the number of children in care has increased from 5,500 to nearly 9,000. This number is really alarming. There are now 79 separate residential establishments and a staff of over 2,000. The new arrangement will relieve the children's committee of much detailed work and will give them more time to discuss major policy issues of child-care and to co-ordinate and plan the development of the service as a whole. It is thought that the district organization will allow for fruitful experiment and give opportunity for comparison and interchange of ideas. It is estimated that the rearrangement will result ultimately in a saving of about £9,000 a year.

NORTHUMBERLAND ACCOUNTS, 1954/55

The 1¼ million acres comprising the border county of Northumberland is one of the largest local government areas in England and Wales and has a population of 446,000. Total expenditure for the year amounted to £7 million of which government grants met almost two-thirds: after crediting miscellaneous income there was a residual rate charge of £2 million equal to £4 11*s.* per head of population which was covered by a rate precept of 16*s.* Among the useful tables which Mr. K. W. Arnold, A.S.A.A., county treasurer, has included in his published statement is one analysing and comparing the main heads of county expenditure over a series of years: it is noteworthy that expenditure on the 2,500 miles of county roads in 1954/55 was only 23 *per cent.* in excess of the figure for 1946/47 whereas over the same period total county expenditure increased by 80 *per cent.* and education expenditure by 128 *per cent.*

The county receives a substantial exchequer equalization grant of £972,000 and, like many other authorities, has no doubt been awaiting the results of the revaluation with great interest.

Superannuation fund moneys have been invested as to about three-quarters in external trustee securities and as to the remaining quarter in mortgage loans of the county council. The shortage of supplies from the Public Works Loans Board may induce many authorities to utilize internal funds for financing capital expenditure to a greater extent than in the past: certainly the insecurity of so-called gilt edged security, shown by the heavy depreciation suffered by most substantial holders, is no inducement under present conditions to extend commitments in this field.

As befits a county where agriculture is so important, teaching and practice are both encouraged. The well-known Kirkley Hall Farm Institute provides a wide variety of agricultural teaching for students from Northumberland and from other areas, while 129 tenants have been provided with smallholdings. (The year's deficit on the latter chargeable to rates amounted to £5,800.) There is also a substantial credit of £2,600 to the police account in respect of the services of police officers under the Diseases of Animals Acts.

Incidentally we observe no credit to the police account for police acting as coroners' officers. There is a variety of practice on this matter as between different police authorities but we understand that district auditors now insist on credit being given in appropriate cases.

PERSONALIA

APPOINTMENTS

Mr. H. J. M. Flaxman, Acting Attorney-General, Gibraltar, has been appointed Chief Justice of Gibraltar, in succession to Mr. Roger Sewell Bacon, who has been appointed Justice of Appeal, Eastern African Court of Appeal.

Mr. Richard Arthur Loraine Hillard, a barrister formerly practising on the South Eastern Circuit, has been appointed an additional county court Judge for the Bristol circuit. He was expected to sit for the first time in Bristol on January 6, with Judge H. W. Paton. Judge Paton will continue to sit at the Guildhall and Judge Hillard will preside at the Council Chamber. Judge Hillard's circuit will take in courts at Shaftesbury, Wells, Axminster, Thornbury, Wincanton, Chard, Frome and Taunton, some of which were previously in other circuits. He will also sit as divorce commissioner at Bristol, Gloucester and Plymouth. Judge Hillard was called to the bar in 1931.

Mr. Humphrey Byron Dolphin, M.A., town clerk of Glossop, Derbyshire, has been appointed town clerk of Warwick in succession to Mr. H. C. F. M. Fillmore, who is retiring for health reasons. Mr. Dolphin will take up his appointment in about two months' time. Mr. Dolphin was articled at Newark-on-Trent and, after qualifying as a solicitor, was appointed an administrative assistant to Southampton county borough council in 1945 and later assistant solicitor. In 1951 he was appointed deputy town clerk of Wednesbury, Staffs., and in 1953 became town clerk of Glossop.

The following appointments of new registrars and assistant registrars have been announced by the Lord Chancellor:

Mr. Harry Lloyd Williams to be registrar of Croydon, Dorking, Epsom, and Reigate county courts in succession to the late Mr. Bruce Humfrey.

Mr. John Bernard Prentis to be registrar of Brentford, Uxbridge, and Watford county courts in succession to Mr. H. Lloyd Williams.

Mr. John Kyrle Hankinson, registrar of Brighton, Haywards Heath, and Worthing county courts and district registrar in the District Registry of the High Court in Brighton, to be, in addition, registrar of Chichester, Arundel, and Petworth county courts in succession to Mr. G. H. B. Peters, who has retired.

Mr. Geoffrey Lewis Howarth to be an assistant registrar attached to Brighton county court.

Mr. Harold Edwin Piffe-Phelps to be an assistant registrar attached to Birmingham county court.

Mr. William Austin Driskell has been appointed assistant official receiver for the bankruptcy district of the county courts of Canterbury, Rochester and Maidstone. This appointment, announced by the Board of Trade, took effect from December 19, 1955.

Mr. Donald Stockwell has been appointed an assistant official receiver for the bankruptcy district of the county courts of Bradford; Dewsbury, Halifax and Huddersfield, and also for the bankruptcy district of the county courts of Leeds; Harrogate; Scarborough; Wakefield and York. This appointment, announced by the Board of Trade, took effect from January 1, 1956.

Mr. Wilfred Whitehead has been appointed an assistant official receiver in the Companies (Winding-up) Department. This appointment took effect from December 29, 1955.

Mr. Walter Harold Haigh has been appointed an assistant official receiver in the Bankruptcy (High Court) Department. This appointment took effect from December 29, 1955.

Mr. John Birkett Gibbs Moore has been appointed an official receiver for the bankruptcy district of the county courts of Ashton-under-Lyne and Stalybridge; Blackburn; Blackpool; Bolton; Burnley; Oldham; Preston; Rochdale and Stockport. This appointment, announced by the Board of Trade, took effect from December 19, 1955.

Mr. F. D. Howarth, deputy clerk to Birmingham city justices since 1948, is to succeed Mr. T. Elias, who retires on March 31, next, *see* our issue of December 31, last. Mr. Elias was appointed deputy clerk in 1920, having previously served under his father who was clerk to the Merthyr Tydfil justices. Mr. Howarth was admitted in 1938 after serving his articles with the clerk to Barnsley county borough justices. He was formerly deputy clerk to Stoke-on-Trent city justices from 1946 to 1948.

Mr. G. L. Tatton, D.P.A., junior assistant solicitor in the town clerk's department of Ilford, Essex, borough council, has been appointed chief assistant solicitor to Cheltenham, Glos., borough council, as from January 16, 1956. He commenced as a junior assistant solicitor at Ilford on March 23, 1954, and before that served as a committee and legal clerk with Keighley, Yorks., borough council.

Mr. O. A. Walden, LL.B., assistant solicitor to Battersea borough council, S.W.11, has been appointed deputy town clerk, to succeed Mr. C. M. W. S. Freeman, now town clerk. Mr. Walden has been in the council's service since December, 1910, and has been assistant solicitor since September, 1938.

Mr. R. E. O. Rimmer, an assistant solicitor in the department of the clerk of Gloucestershire county council, has been appointed assistant solicitor to the National Coal Board (South West Division). Mr. Rimmer will take up his new duties in the middle of February, next.

Mr. K. L. Amey, LL.B., is the new senior assistant solicitor to the borough of Leyton, E.10. He commenced duties on December 1, 1955, before which he was assistant solicitor with Stockport county borough council. Prior to that he was in practice as an assistant solicitor with firms in Blackpool and Leeds; he was admitted in January, 1947. Mr. Amey succeeds Mr. Rallison, *see* our issue of September 17, 1955.

Mr. Arthur Alan Bouchier, LL.B., has been appointed an assistant solicitor to Middlesex county council. He was admitted on July 1, 1953, and was previously employed as assistant solicitor by the metropolitan borough of Hampstead. Prior to the latter appointment, Mr. Bouchier was in the service of the county borough of Bootle, latterly as an assistant solicitor.

Mr. Alan Mason Layland has been appointed assistant solicitor to Leigh, Lancs., borough. Mr. Layland was admitted in 1940, and since 1945 has been in private practice, at Wigan, Lancs. The post of assistant solicitor is a new one, there being no previous occupant.

Mr. S. M. Kenny has been appointed principal assistant in the department of the clerk of the county council of Middlesex. Mr. Kenny is at present an assistant solicitor with Surrey county council, with which authority he has been employed since 1952. He was previously employed by Ealing borough council and before that by Coventry city council.

Superintendent R. Baker has been appointed to take charge of Newbury, Berks., police division. He has been at headquarters in charge of the county mobile department.

Miss H. M. Taylor has been appointed deputy children's officer for the county of Kent, in succession to Mrs. K. E. Jamieson, who has now become children's officer to Dorset county council. Miss Taylor has been an assistant children's officer to Nottinghamshire county council since 1951. She holds the Social Science Certificate (London) and the Home Office Certificate in Child Care. Miss Taylor will take up her new duties shortly.

Mr. James Eric Dever has been appointed a probation officer in the Lancs. (No. 11) combined probation area. He will take up his duties on February 1 and will be stationed at Prescot. Mr. Dever is at present a serving officer in the Staffordshire combined probation area.

Detective-Inspector Frank Rutherford Noble has been promoted to the position of detective-chief inspector and appointed head of the Criminal Investigation Department of Huddersfield, Yorks., borough police force. He succeeds Chief Superintendent David Bradley, now the deputy chief constable.

ANNIVERSARY

Mr. C. J. Newman, O.B.E., town clerk and clerk of the peace for Exeter, completed 25 years in the latter office on December 31, 1955. In November last, Mr. Newman was elected President of the Society of City and Borough Clerks of the Peace for England and Wales. Mr. Newman has already been President of N.A.L.G.O. (1947–48), and President of the Society of Town Clerks (1950–51).

RESIGNATIONS AND RETIREMENTS

Mr. J. A. Berry, town clerk of Ripon, Yorks., has resigned his post, on accepting an appointment as town clerk of Kisumu, in Kenya. Mr. Berry was appointed town clerk of Ripon in October, 1948. He was admitted in June, 1939.

Mr. R. Holme, chief clerk at Dartford county court, is retiring after 45 years' service at Dartford and Westminster county courts.

Mr. Stanley E. Wilkins, a solicitor of Aylesbury, is giving up private practice and relinquishing his post of coroner for Mid-Bucks. During his term of office he has held 2,000 inquests.

Mr. Harold Crookes, town clerk of Aylesbury, Bucks., is to retire on July 14, 1956. He came to Aylesbury in 1925 from Barnsley, Yorks., where he was assistant town clerk. Mr. Crookes has served Aylesbury town council for 31 years.

Detective-Superintendent I. S. Evans, chief of the Shropshire C.I.D., has retired after 25 years' service with the Shropshire constabulary.

OBITUARY

We announce with regret the death at the age of 81 of Sir George Jones, Q.C., who was formerly M.P. for Stoke Newington.

George William Henry Jones was born in 1874 and was in business before migrating to the bar to which he was called by Gray's Inn in 1907 after achieving a certificate of honour in his final examination.

Sir George was an effective advocate and quickly obtained a good practice in London.

He entered Parliament, after two unsuccessful previous attempts, in 1918, when he was returned for Stoke Newington in the Unionist interest. This Division he continuously represented, except for a break between 1923 and 1924, until 1945. He was zealous in the interests of his constituents. Concurrently his career at the bar progressed and in 1937 he was appointed recorder of Colchester. He took silk in 1943.

B.M.G. writing in *The Times* says: ". . . Though small in stature, unimpressive in appearance and neither glib nor eloquent, he was a deadly cross-examiner and seldom, if ever, missed a point in his clients' favour. Above all he knew when to stop. Many a witness lulled into a false sense of security by George Jones' unimpressive appearance and manner, realized too late that the truth had been skilfully extracted from him. He had a keen sense of justice and an uncanny instinct for the fraudulent rogue . . ."

Mr. Justice Macrossan, Chief Justice of Queensland, from 1946, has died at the age of 66.

Mr. Horace Wilfred Skinner, C.B.E., for 20 years clerk to Derbyshire county council, has died in hospital at the age of 71. He retired from the clerkship five years ago.

Mr. Thomas Smailes, who retired in December, 1954, from the position of clerk to the magistrates for the Upper Agbrigg, Yorks., petty sessional division, has died at the age of 68. Mr. Smailes had held the clerkship for 18 years when he retired. He was a former president of the Yorkshire Justices' Clerks Society.

The death has occurred of Mr. Trevor Treharne Jones, the town clerk of Blackpool, Lancs.

REVIEWS

Paterson's Licensing Acts. 64th Edition. By F. Morton Smith, B.A. London: Butterworth & Co. (Publishers) Ltd.; Shaw & Sons, Ltd. Price 60s. net.

Once again the challenge to produce a new *Paterson* in good time before the first session of brewster sessions comes round in early February has been met and this familiar work finds its way to our right hands in season for its fullest use.

This is the tenth edition for which editorial responsibility has been with Mr. Morton Smith, clerk to the justices of Newcastle upon Tyne, and it worthily upholds his reputation for careful editing.

All the statute law and case law falling within its subject matter have been brought up to date and also there has been found a place for the elusive Statutory Instruments on which the practitioner can rarely lay his hand in time of need. Under this latter head may be noticed the Cinematograph (Safety) Regulations, 1955, and the Cinematograph (Children) Regulations, 1955, which, with the belated coming into force of the Cinematograph Act, 1952, have effected a minor revolution in the law governing cinematograph exhibitions. (It comes as a mild shock to observe that the law on this subject has remained substantially unaltered since the Bioscope theatre was first noticed as a feature of English life: since some years before Mr. Charles Chaplin first put on his funny boots.)

We are glad to see that the notes on the much misunderstood decision in *R.* v. *Taylor*; *R.* v. *Amendt* (1915) have been re-written in the light of the recent case of *R.* v. *Godalming Licensing Committee, ex parte Knight* (1955) 119 J.P. 441. We are interested also to observe that in *R.* v. *Woodbridge* (*Suffolk*) *Justices, ex parte Commissioners of Customs and Excise* (only reported, apparently, in the *Brewing Trade Review*) a view which we have expressed in our Practical Points columns on a number of occasions has been upheld (*see* our vol. 117 at pp. 127, 599, 615, and vol. 119 at p. 290). Mr. Morton Smith notes this case on the basis of a successful application to move for an order of *certiorari* reported in the May issue of the *Brewing Trade Review:* the order was granted in due course as reported in the November issue. To this, no doubt, attention will be directed in the next edition of *Paterson*.

We notice also with satisfaction that the references to the repealed Licensing Acts, 1910 and 1921, in the many forms and precedents appearing in the work have been altered so as to bring them into line with the Licensing Act, 1953.

Police Procedure and Administration. By C. C. H. Moriarty, C.B.E., LL.D. Sixth Edition. London: Butterworth & Co., Ltd. Price 10s. 6d. (postage 9d. extra).

This is a book of interest not only to the police and to those practising in the Criminal Courts but also to anyone who wishes to have a general knowledge of the police of this country, their previous history, the method of their appointment and their training, their duties and so on.

The first edition was published in November, 1930, and the fifth in 1950. The author has now made the various amendments necessitated by the Magistrates' Courts Act and Rules of 1952, and by various new regulations affecting the police, including the Police Pensions Regulations of 1955.

Not only are purely police matters dealt with, but there are also chapters on summary jurisdiction, summary trial of indictable offences, indictable offences, extradition, the Director of Public Prosecutions, and the powers and duties of private persons. Almost inevitably when a great deal of detail has to be compressed into a few pages instances occur in which individual paragraphs fail to tell the whole story. There are examples of this in this book, but it would be unfair to make much of them. One definite omission is that of the word " clear " from the sentence which states that " the normal period of remand is for a period not exceeding eight days."

We can recommend this book. It contains a great deal of information in small compass (the total number of pages is only 368), and it is information which in some cases is not very easily found elsewhere. The price, in these days when two or three guineas seem to buy very little, is most reasonable.

Road Traffic Law. Amendments No. 5. By James McConnach, Chief Constable, Aberdeen. Published by Mearns Publications, 7-9 Union Road, Aberdeen. No price stated.

The loose leaf form in which this book is produced makes the inclusion of amendments easy because the out-of-date pages are discarded and the new ones inserted in their places in proper order. This is much more convenient than a supplement, which has to be referred to in conjunction with a main volume.

These latest amendments take the book up to August 1, 1955. The alterations are considerable because they are those consequent upon the Motor Vehicles (Construction and Use) Regulations, 1955, together with the associated Track Laying Vehicles and the Authorization of Special Types Regulations, 1955. As we have noted on former occasions, the work of revision seems to have been painstakingly and accurately done, and a useful volume is once again up to date, until a new Road Traffic Act or other similar provision makes further major amendment necessary.

Ageing in Industry. By F. le Gros Clark and Agnes C. Dunne, The Nuffield Foundation, Nuffield Lodge, Regent's Park, London, N.E.1. Price 6s. 4d., post free.

This is a report of an inquiry into the problem of ageing under the conditions of modern industry which was based on figures derived from census reports. The director of the Nuffield Foundation, in a foreword, points out that with the increasing proportion of older men and women in the population, Great Britain will be faced over the next 20 years with some complex social and industrial problems; but the problems may turn out to be rather less disturbing than has been apprehended in some quarters. The authors reached the conclusions that a fair number of men have to leave their normal occupations while still probably in a reasonable state of health and working efficiency. But that the capacity of men to continue beyond their mid-sixties depends mainly upon the actual jobs they have to do.

GLEANINGS FROM THE PRESS

The leading article in the Bradford *Telegraph & Argus* for December 10, last, reads as follows:

THE "PANTOMIME"

It will come as a surprise to many to learn that the Bradford city council will probably take no action in connexion with the statements made during the mention at Leeds Assizes yesterday of the charges against 13 *Pakistanis who were committed by the Bradford magistrates to take their trial following what was described as a "battle" in a Bradford street.*

Knives, bottles, pokers, and even a frying-pan were alleged to have been used in the fight, following which eight Pakistanis were taken to hospital and five detained with multiple injuries.

Counsel for the prosecution, Mr. A. M. Hurwitz, told Mr. Justice Oliver that "it was never intended that the matter should be dealt with other than summarily," and said the magistrates "without asking anyone whether they wanted committal or otherwise" proceeded to commit the 13 *men for trial at the Assizes.*

The fact is that the magistrates had no other course open to them. The proceedings were taken under s. 18 *of the Offences against the Person Act of* 1861, *and the magistrates were powerless to adjudicate in the matter. They had by law to commit the men concerned to trial at the Assizes if, as examining magistrates, they found a case had been made out against them. When they reached this decision the cases which counsel referred to as "private proceedings" (summonses for common assault arising from the disturbance) went by the board and the more serious charges under the* 1861 *Act sent for trial to the Assizes, not even to the quarter sessions, as the Act lays it down that such charges under s.* 18 *are not triable at the quarter sessions* !

It is no wonder that the term "gross misrepresentation" has been used in connexion with what occurred yesterday, a state of affairs which led the Judge to say the case would have developed into "a kind of judicial pantomime."

The town clerk of Bradford, Mr. W. H. Leathem, has intimated that "no further action will be taken" and "the less said about it the better," adding: "The costs will be less than if the case had been tried ! *"*

The question of costs should not enter into it. What does enter into it is the question of the administration of justice in the city and if the Judge is correct on the facts which were laid before him in saying that the case was a "kind of judicial pantomime" then active steps should be taken immediately to remedy what must be an unsatisfactory state of affairs in the Bradford courts.

If, on the other hand, there is ground for the allegation of "gross misrepresentation" in connexion with the matter then it is the duty of the Bradford city council to take every step, at no matter what cost, to obliterate the implied—and, on the facts as ascertained, unjustified—slur cast on the administration of justice in the city.

The matter certainly should not rest where it stands.

We gather from the report of the case in the *Telegraph & Argus* that originally nine men were summoned for assault and that there were cross-summonses against four other men. Apparently all those summonses were for common assault. Later, however, "two Pakistanis who had received injuries which had kept them in hospital, issued summonses for wounding with intent to cause grievous bodily harm." The deputy magistrates' clerk is reported to have said, "These summonses arose out of the same incident and the depositions were taken for committal. The summonses for common assault were withdrawn and the justices were satisfied that there was evidence of occasioning bodily harm."

If all 13 men were summoned or charged before the magistrates with wounding with intent to cause grievous bodily harm then the magistrates were justified in committing them to the Assizes for trial if they were satisfied that a *prima facie* case had been made out against each of them, assuming, of course, that they observed the provisions of the Magistrates' Courts Act and Rules relating to proceedings preliminary to trial on indictment. If the accused men were before the magistrates on *any* indictable charge they would be entitled to commit them for trial for wounding with intent to cause grievous bodily harm if they thought that was the offence disclosed by the evidence. By s. 7 (1) of the Magistrates' Courts Act, 1952, the justices are to consider whether "there is sufficient evidence to put the accused on trial by jury for any indictable offence." It is the charge or charges they think are disclosed by the depositions which must be written down and read to the accused under r. 5 of the Magistrates' Courts Rules, 1952, and those charges need not necessarily be those originally preferred.

Mr. W. J. Howells, clerk and chief executive officer to the Usk River Board, has reported two cases from Monmouthshire under the Salmon and Freshwater Fisheries Act, 1923.

(a) *At Brecon on November* 9, 1955, *a defendant was convicted of* (i) *having in his possession salmon roe for the purpose of fishing for salmon contrary to the provisions of s.* 2 *of the Act and a fine of* £2 10*s. was imposed,* (ii) *obstructing a water bailiff in making a search, authorized by the Act, contrary to s.* 67 (2) *and a fine of* £2 10*s. was imposed. The accused was a licensee under the Act and had previous convictions for offences against the Act and the court disqualified him for holding a licence under the Act for a period of* 12 *months under the provisions of s.* 74 (2).

(b) *At Defynock on November* 30, 1955, *a defendant was convicted of using explosives in waters within this board's area with intent thereby to take or destroy fish contrary to s.* 9 *of the Act and was fined* £15 *and ordered to pay* £1 1*s. advocate's fee and* £1 *witness' costs. A second defendant was convicted of aiding and abetting the first defendant in accordance with the provisions of s.* 35 *of the Magistrates' Courts Act,* 1952, *and fined* £10 *and ordered to pay* £1 1*s. advocate's fee.*

River boards are established under the River Boards Act, 1948, and they control land drainage, fisheries, river pollution and water conservation in their areas. These prosecutions were undertaken by the Usk River Board in the exercise of the functions relating to fisheries transferred to river boards by sch. 3 of the River Boards Act, 1948.

The maximum penalty under s. 2 and under s. 67 of the Salmon and Freshwater Fisheries Act, 1923, the sections under which the defendant was convicted in the first case, is £50. That is the maximum penalty provided by s. 74, the general penalty section.

Licences to fish for salmon or trout are granted by river boards under s. 61 of the Act. Under s. 74 (2) on a second conviction of a licensee his licence may be forfeited and he may be disqualified for holding a licence for a period not exceeding one year.

On a third or subsequent conviction for an offence under the Act, the offender may be imprisoned for three months (s. 74 (3)).

The second case reported is a more serious one. The special penalty provided under s. 9 for using explosives or noxious substances for the taking or destruction of fish is a fine not exceeding £50 or imprisonment for a term not exceeding three months.

On conviction for any offence under the Act the court may forfeit any instrument in respect of which the offence was committed and any fish illegally taken by the person convicted or in his possession at the time of the offence (s. 74 (1)).

Powers of search and seizure are given to water bailiffs by s. 67 of the Act.

SCALE CHARGES

One of the most frightening things in the western world today is the vast measure of technical ingenuity and material power combined with an uncritical self-complacency and a naive immaturity of thought. Popular science has given people the impression that the only question that matters is *how* to make things work; the philosophic "why?" is almost entirely neglected. This narrowness of outlook is reflected in a general over-simplification—a stripping of every issue to its bare bones, and treating the skeleton as if it were a living entity. No one need take the trouble to study the humanities; all the essentials can be presented on television or in strip-cartoon form. It is not necessary to read books, for they can be summarized in a few pages of the *Readers' Digest*. "General" knowledge (which is apparently the only kind that matters) is easily acquired and tested by means of the "Quiz." (We all know the kind of thing —*Paradise Lost* is (*a*) a novel by Ernest Hemingway? (*b*) a sermon by Father Divine? (*c*) a poem by Milton? (*d*) a "musical" by Irving Berlin?). Political ideas can be instilled by a course of Democracy in Six Easy Lessons; spiritual ideals by easily-remembered slogans (Four Principles, Eight Point Charters, and so forth). The pulse of public opinion, on all sorts of complex questions, can be felt by means of a Gallup Poll; there is no need to think out a line of one's own, since only a simple yes or no, to questions ready-formulated, is required.

This trend, in the opinion of some observers, is liable to have dangerous consequences. The time may not be far distant when populations on both sides of the Atlantic will be sharply divided between a minority of technicians, wielding immense power, and a vast number of near-morons, practically inarticulate and incapable of apprehending any but the simplest of ideas. Philosophic questions will be eschewed altogether; aesthetic appraisement will be available in predigested form. Elegancies of style, beauty of language, the choice of the *mot juste*, will be refinements unnecessary to a mechanistic civilization. Everything will be neatly tabulated, in black and white; light and shade will disappear from human ken.

A recent article in *The Observer* describes a commendable effort to check the process in at least one important phase of daily life—the commissariat department. At the Psychometric Laboratory of the University of Chicago, science and psychology, in holy alliance, have been developing "a food-preference vocabulary for G.Is." Translated into English, this appears to mean a set of formulae by which the likes and dislikes of the American soldier for cookhouse fare may be accurately measured and assessed. Inspired by that childlike faith in statistics, which is so touching a characteristic of social research in the United States, the investigators have painstakingly collated a set of phrases which the soldier applies, or may be expected to apply, to his food. "A numerical value was allotted to each phrase according to the degree of approval or disapproval a number of G.Is. attributed to it."

"What the soldier said" (*pace* Stareleigh, J., in *Bardell* v. *Pickwick*) is thus made admissible as relevant evidence in this particular context. If one scans the list of phrases in ribald mood, one is tempted to make the comment that "other ranks" in the United States Army must be more nicely brought up than their British opposite numbers. The lowest rating of all, which scored minus 6·44 points, was the word "despise"; it is pretty certain that a similar system over here would produce something more picturesque and less printable. "Loathe" was marked at minus 3·76; "terrible" at minus 3·09, and "don't care for it" at minus 1·10. Against these low-water marks it is a relief to turn to what Nanki-Poo would describe as the modified rapture of the expression "O.K.," which was rated at plus 0·87, "thus denoting" (says *The Observer*) "a G.I's. grudging, borderline approval."

From this neutral reaction the assessments rise through "tasty," with 1·77 marks, and "mighty fine"—a euphemistic expression which scored only 2·88—to "like intensely" (4·05), and "best of all," which scored the maximum of 6·15. The next step was to get the men to mark a list of 20 foods according to the scale; the rating of iced coffee, it appears, was "very consistent"; but the reaction to jellied fruit salad, sad to relate, was uncertain. We are not informed at which end of the scale these delicacies were placed.

The Quartermaster Food and Container Institute of the United States Army has invented a strange neologism for this method of rating, which it calls a "hedonic scale." Rolling this phrase round our tongue, we find our own psychometric reaction to be somewhere between "don't care for it" (minus 1·10) and "terrible" (minus 3·09). Unfortunately our opinion, not having been asked, is unlikely to weigh in the scale of values. We venture however to hope that the pundits of Chicago may consider one practical proposal for extending the system from the "Q" to the "A" branch, and try to ascertain, on a similar scale, the rating of the Regimental Sergeant-Major.

A.L.P.

NOTICES

The first court of quarter sessions for 1956 for the borough of Bridgwater will be held on Friday, January 20, 1956, at the Court House, Northgate, Bridgwater, commencing at 10.30 *a.m.*

The first court of quarter sessions for 1956 for the borough of Guildford will be held on Saturday, January 21, 1956, at the Guildhall, Guildford, commencing at 11 *a.m.*

ADDITIONS TO COMMISSIONS

RADNOR COUNTY

Mrs. Diana Yarnton Barstow, Fforest, Hundred House, Builth Wells.

William John Percival Morgan, Lower House, Franksbridge, Builth Wells.

WEYMOUTH BOROUGH

Mrs. Elsie May Byles, 21, Marina Gardens, Weymouth.

Capt. Roderick Latimer Mackenzie-Edwards, C.B.E., R.N. (retd.), Wellington House, 22, Dorchester Road, Weymouth.

Miss Marjorie Marion Isaac, 83, Dorchester Road, Weymouth.

Mrs. Katherine Sedgman, Pendover, Belfield Park, Weymouth.

John Redvers Westmacott, Redlands Farm, Weymouth.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Evidence—*Conviction of employee, whether evidence against employer—Time for which drivers may remain continuously on duty—Road Traffic Act*, 1930, *s.* 19—*Road and Rail Traffic Act*, 1933, *s.* 16—*Records as to hours of work, etc.*

An employee has been convicted and fined for driving a motor vehicle, contrary to s. 19 of the 1930 Act. He admitted the correctness of the record of hours produced at the hearing. The employer has now been summoned for permitting him so to drive.

1. Can the conviction of the employee be proved on the hearing of the summons against the employer?

2. If so, would it act as an *estoppel* to the employer from contradicting the correctness of the record of hours upon which the employee has been convicted?

Kindly quote any authority.

SIBBOR.

Answer.

The conviction of the employee is not evidence against the employer, and the facts must be proved against the latter. The conviction is not a judgment between the same parties as are concerned in the second case.

See Castrique v. *Imrie* (1869) 39 L.J.C.P. 350, and other cases cited in *Phipson on Evidence*, 8th edn., pp. 407 and 412.

2.—Heather and Grass Burning.

I have received a report to the effect that two schoolboys have set fire, causing considerable damage, to heather and grass growing on rough pasture, through which runs a public footpath. These boys were using the footpath when they lighted matches and caused the heather and grass to ignite. I shall be obliged if you will let me know whether or not you consider these boys can be proceeded against for an offence in contravention to the Heather and Grass Burning (England and Wales) Regulations, 1949.

TURF.

Answer.

In our opinion the boys must be prosecuted under para. 4 of the regulations if there is evidence that they set fire to the heather and grass intentionally. If it was accidental it does not seem to us that the regulations would apply.

3.—Licensing—*Whether licence may be transferred from A alone to A and B jointly.*

In 1947, A was granted a publican's licence in respect of hotel premises in a village in this division. A's husband is the owner of the property. It is now a limited company, A and her husband being the directors thereof. A now desires that the licence shall be held in the joint names of herself and her husband as directors of the company, and in view of s. 21 (4) of the Licensing Act, 1953, I should be glad of your opinion as to whether the licence could be transferred from A, to A and her husband.

NIPPO.

Answer.

The licence may be transferred. Section 21 (4) (*d*) of the Licensing Act, 1953, is satisfied by the situation that A, in her capacity of sole occupier, is giving up occupation of the premises and she and B will jointly become the occupiers.

4.—Magistrates—*Jurisdiction and powers—Venue—Forgery of a receipt—Prosecutor in X, defendant in Y—No evidence that forgery took place in X—Proceedings before magistrates in X.*

A living in the county of X sends an account to B living in the county of Y. As the account is not paid A calls on B at his home. B produces the account which appears to have been receipted and says he has paid A. A takes the receipted account and after making inquiries is satisfied that the receipt is a forgery and hands it to the police at X. The X police desire to bring B before the court at X on a charge of forgery committed at Y. (There is no evidence of the alleged offence having been committed at X.)

Can proceedings be taken against B at X and if so what is the authority for doing so?

SANKAR.

Answer.

If B is brought before magistrates at X they have jurisdiction as examining justices over the offence by virtue of s. 2 (3) of the Magistrates' Courts Act, 1952.

5.—Magistrates—*Practice and procedure—Binding over persons who are before the court—No previous complaint—Procedure.*

By s. 91, Magistrates' Courts Act, 1952, the power of justices on the complaint of any person to adjudge that a person shall be bound over as above is to be exercised by order on complaint.

On the hearing of assault charges arising out of neighbours' quarrels it not infrequently appears from their own evidence and demeanour that the complainant or witnesses are themselves guilty of provocative conduct or threats which lead to apprehension of further immediate breaches of the peace unless such persons are bound over by way of preventive justice.

In such circumstances, such complainant or witnesses being in court, can the justices (having adjudicated upon the assault charge) proceed then and there to bind over such persons (*ex parte Davis* (1871) 35 J.P. 551; *R.* v. *Wilkins and Others, ex parte John* [1907] 2 K.B. 380; 71 J.P. 327)?

Alternatively, should the justices direct the police then and there to make a complaint for sureties under s. 91, Magistrates' Courts Act, 1952, the concerned persons being informed that the complaint will be adjourned to be dealt with on summons unless such persons consent and desire that it be dealt with then and there (*Gray* v. *Customs Commissioners* (1884) 48 J.P. 343; *R.* v. *Hughes* (1879) 4 Q.B.D. 614)?

Or should such matters always be dealt with by summons on a later day?

TOUGHS.

Answer.

Section 91 of the 1952 Act prescribes the procedure when someone asks that another person be ordered to enter into a recognizance to keep the peace or to be of good behaviour *towards the complainant*. The power of a court, of its own motion, to require recognizances in such circumstances as are instanced in the question is not affected by s. 91, and no complaint is there required.

6.—Magistrates—*Practice and procedure—Probation officer's report—Handing copy to prosecution—Considering report in absence of probation officer.*

I shall be obliged if you will let me have your opinion upon the following points:

In my court recently a defendant, having elected to be tried summarily, pleaded guilty to a charge of larceny. At the request of the defence one witness for the prosecution was called, and the defendant's solicitor addressed the court, putting in letters from various people dealing with the character of the defendant. The probation officer, having been called to the county quarter sessions, was unable to be present in the court, but his written report, a copy of which had been already sent to the defendant's solicitor, was considered by the justices. No objection was taken at the time by the police, but after the court, the prosecuting police officer pointed out that, as the probation officer had not been present to put the report in on oath, the justices should not have seen it. He, the police officer, also maintained that when a probation officer attends a court and a written report is submitted, in addition to a copy being given to the accused in accordance with s. 43 of the Criminal Justice Act, 1948, a copy should be handed to the prosecution who may like to challenge the probation officer upon it. The probation officer has, I understand, refused in the past to hand a copy of his report to the police, stating that he is reporting to the court and that the court can, if it thinks fit, let the police see it, but the police cannot demand to see it. This seems to be a reasonable attitude to take, if one takes the view that once the police have proved the charge, their duties are complete, and bearing in mind that the report is to assist the justices in determining the sentence, the police should not be concerned with any lawful penalty the court may impose. The probation officer feels that if the confidential matters set out in his report have as a matter of course to be brought to the notice of the police, he may experience considerable difficulty in future in gaining the confidence of defendants and the general public.

Is the probation officer correct in his interpretation of the section, or *must* the police be handed a copy of any written report submitted to the court by him?

TELSO.

Answer.

We believe that probation officers and police officers frequently exchange information when making inquiries about an offender's record, family history, work record and so on, and each may be

helped by the other's knowledge. We should deprecate any antagonism between them, for each has a duty to give all relevant information to enable the court to do justice in the case. But the prosecution have no right to a copy of the probation officer's report. However, everything material to the decision must take place in open court and subject to any ruling of a higher court on the matter, we think that the court should refer to anything in the report which is to affect their decision and so give the prosecution a chance to challenge anything which they allege is untrue. The court can then seek further information on the point if they wish.

In deciding the most suitable method of dealing with a person a court has frequently to consider a report made by a probation officer who, for good reason, cannot be present in court, and we see nothing wrong in the procedure followed in this case.

7.—Public Health Act, 1936—*Nuisance—Box room used for sleeping.*

A complaint has been laid under s. 94 of the Public Health Act, 1936, to abate a nuisance, namely to increase the area of a window in a house to at least one-tenth of the existing floor space. The owner let the house some years ago to a married couple at a low rent. The tenants then had no children and the house only had one bedroom and a room about 8 *ft.* by 6 *ft.* which the owner describes as a box room. This latter room is now used as a child's bedroom, and has the window now required to be enlarged. The owner contends that this room was never intended to be used as a bedroom and complains that he should not be put to this expense, and that the house is now overcrowded so that the local authority ought to re-house the tenants and their family.

1. Has the owner any defence to this complaint? If so, what?
2. Does it matter for what purpose the room is used?
3. Should the owner have taken steps to challenge the abatement notice when it was served upon him?
4. Is it now too late for the owner to raise any objection to the notice of complaint?
5. Can you refer us to any cases or sections of any Acts which would assist?

ANKAR.

Answer.

1 and 2. We think the owner's answer is that there is no structural defect, looking to the purpose for which the room was designed, and that the nuisance, if any, arises from the tenant's misuse of the room.

3. He was not obliged to do so. He could properly wait till the court became seized of the case, and then defend.

4. No.

5. If you have access to *Lumley*, you will find cases at p. 2510 of the new edition. *Lumley* there says: "It is submitted that in general the occupier, not the owner, is the person by whose act, default, or sufferance a nuisance of overcrowding arises," and refers to a Scottish decision. We doubt whether on the facts here there is overcrowding within the provisions of the Housing Act, 1936, but this may depend on the age of the children, which we are not told.

8.—Public Health Act, 1925, s. 19—*Indication of name of street.*

X Yard, adopted as a repairable street, leading from Y Street passes through a covered alleyway between two buildings, A and B. Property C, although now having its only entrance on X Yard, was once part of property A and has always had a Y Street number, and it is reasonable that such a position should continue. There are no other properties fronting X Yard which require a number. To aid identification the council now propose to replace the street sign "X Yard" fixed on property A by a sign "X Yard, leading to No. 14 Y Street." Is the council right in fixing the last sign as a name-plate under s. 19 (1), and would it be an offence under s. 19 (2) if the owner of property A defaced that part of the proposed inscription "leading to No. 14 Y Street"?

PARBON.

Answer.

"X Yard, Y Street" would be a proper description under s. 19 (1) of the Act of 1925, but "leading to No. 14" is a direction sign, and there is no general power except by consent to put a direction sign on a house or building. The name could be altered under s. 18 to "X Yard, No. 14 Y Street," but it would be simpler to get A's consent and failing that, if the owner of A does not own B, get the consent of the owner of B to put the original proposed notice on B.

9.—Rating and Valuation—*Beneficial occupation—House internally flooded.*

I should be obliged if you would advise the rating authority as to whether property is or is not beneficially occupied for the purposes of rateability in the following circumstances. During the winter the owner is abroad, but places the property, furnished, in the hands of agents for the purpose of letting. Whilst the property is unlet a severe frost occurs causing a water pipe to burst. The water not having been turned off by the agents, there is an escape causing extensive damage throughout the house. That the house was thereby rendered uninhabitable is not disputed. The furniture remained where it was in order that it might be inspected by the owner's insurers. The owner now claims that the house was not beneficially occupied throughout the period whilst it was uninhabitable (some four months).

B. STORNOWAY.

Answer.

Habitability is relative. Damage by flooding by internal pipes does not produce the same result as (say) a serious fire which breaks the roof and windows. The house is presumably weatherproof; when it is agreed to be uninhabitable this means that the ratepayer could not live there in the normal manner. He or a person willing to "rough it," could presumably camp in the house. If anybody attempted this, the ratepayer would be entitled to maintain an action for the trespass. Although nobody lives there pending restoration, the furniture is kept there for the ratepayer's own purposes, and he has control. We see no ground for treating the house as unoccupied for rating purposes.

10.—Small Dwellings Acquisition Acts—*Sale by borrower—Whether council should be party.*

My council have made an advance under the Small Dwellings Acquisition Acts to enable a person to acquire a property in this district. The council's borrower now wishes to dispose of this property subject (*a*) to the legal charge and the principal sum and other moneys thereby secured and all interest to become payable in respect thereof, and (*b*) the conditions and provisions contained in the Small Dwellings Acquisition Acts, 1899 to 1923, as amended by the Housing Acts, 1921 to 1949. The council have given their permission to such sale but it occurs to me that, in view of the provisions of s. 4 of the Small Dwellings Act, 1899, the council should join in the conveyance so that the purchaser may covenant with the council for payment of the mortgage debt. Do you agree that this course is necessary?

DUKE.

Answer.

We think not, and (as at present advised) we think it undesirable, seeing that the Act contains provisions designed to protect the council.